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H I Ệ P Đ Ị N H

giữa

Chính phủ Cộng hoà Xã hội Chủ nghĩa Việt Nam

và

Chính phủ Vương quốc Thái Lan

Về khuyến khích và bảo hộ đầu tư

Chính phủ Cộng hoà Xã hội Chủ nghĩa Việt Nam và Chính phủ Vương quốc Thái Lan, sau đây được gọi là "các Bên ký kết".

Nhận thức rằng quan hệ hợp tác láng giềng tốt trong các lĩnh vực kinh tế và thương mại thông qua đầu tư sẽ thúc đẩy phát triển tiến bộ vì lợi ích của nhân dân hai nước,

Mong muốn tạo điều kiện thuận lợi cho sự tăng cường hợp tác kinh tế giữa hai nước, đặc biệt, cho đầu tư vốn của các công dân và công ty của nước này trên lãnh thổ của nước kia trên cơ sở tôn trọng độc lập và chủ quyền của nhau, bình đẳng và cùng có lợi,

Nhận thức rằng việc khuyến khích và bảo hộ lẫn nhau đối với đầu tư đó và đầu tư theo hiệp định quốc tế sẽ làm tăng sự thịnh vượng ở cả hai nước,

Đã thoả thuận như sau :

Điều 1

Với mục đích của Hiệp định này :

1. Thuật ngữ "công dân" có nghĩa là bất kỳ tự nhiên nhân nào mang quốc tịch của một Bên ký kết theo luật hiện hành trên lãnh thổ của Bên ký kết đó;

2. Thuật ngữ "các công ty" có nghĩa là bất kỳ pháp nhân được liên hiệp hoặc thành lập theo luật hiện hành trên lãnh thổ của một Bên ký kết dù có hay không có trách nhiệm hữu hạn và dú có hay không có thu lợi nhuận bằng tiền;

3. Thuật ngữ "đầu tư" có nghĩa là mọi loại tài sản, cụ thể bao gồm, chứ không phải chỉ riêng :

a) Động sản, bất động sản và các quyền sở hữu khác như cầm cố, thế chấp hoặc thế nợ,

b) Các cổ phiếu, chứng khoán và phiếu ghi nợ của các công ty hay lãi thuộc sở hữu của các công ty đó,

c) Những khiếu nại về tiền hoặc về bất kỳ hoạt động nào theo hợp đồng có giá trị tài chính,

d) Các bản quyền sáng chế, nhãn hiệu thương mại, tên thương mại và đặc quyền kế nghiệp,

e) Tô nhượng thương mại theo luật định hoặc theo hợp đồng, kể cả như tô nhượng về nghiên cứu, nuôi trồng, chiết suất hoặc khai thác các nguồn tài nguyên thiên nhiên,

4. Thuật ngữ "thu nhập" có nghĩa là những khoản thu nhập được từ đầu tư và bao gồm, nhưng không phải là tất cả, lợi nhuận, lãi, lãi cổ phần, các khoản tăng vốn, từ bản quyền hoặc lệ phí;

5. Thuật ngữ "lãnh thổ" có nghĩa là lãnh thổ mà trên đó Bên ký kết có chủ quyền hoặc có quyền tài phán;

6. Thuật ngữ "trưng thu" bao gồm các hành vi quyền lực tương đương như trưng thu, cũng như các biện pháp quốc hữu hoá.

Điều 2

1. Lợi ích của Hiệp định này sẽ chỉ áp dụng cho những trường hợp đầu tư vốn của các công dân hoặc công ty của một Bên ký kết trên lãnh thổ của Bên ký kết kia đã được chấp thuận cụ thể bằng văn bản của cơ quan có thẩm quyền của Bên ký kết kia.

2. Các công dân và công ty của một Bên ký kết sẽ phải xin sự chấp thuận đó đối với bất kỳ đầu tư vốn nào bất kể được tiến hành trước hay sau khi Hiệp định này có hiệu lực.

Điều 3

1. Mỗi Bên ký kết, căn cứ vào luật pháp, kế hoạch và chính sách của mình, sẽ khuyến khích và tạo điều kiện thuận lợi cho đầu tư vốn của các công dân và công ty của Bên ký kết kia vào lãnh thổ của mình.

2. Đầu tư của các công dân hoặc công ty của một Bên ký kết trên lãnh thổ của Bên ký kết kia sẽ được hưởng sự bảo hộ và an toàn thường xuyên cao nhất theo luật pháp của Bên ký kết kia.

Điều 4

1.a) Đầu tư của các công dân hoặc công ty của một Bên ký kết trên lãnh thổ của Bên ký kết kia và các khoản thu nhập từ đầu tư sẽ được đối xử công bằng và thoả đáng và không kém thuận lợi hơn so với sự đối xử đối với đầu tư và thu nhập của công dân và công ty của bất kỳ nước thứ ba nào.

b) Mỗi Bên ký kết trên lãnh thổ của mình sẽ dành cho các công dân hoặc công ty của Bên ký kết kia trong việc quản lý, sử dụng, hưởng hoặc từ bỏ những đầu tư của họ, sự đối xử công bằng và thỏa đáng phù hợp với các nguyên tắc của luật pháp quốc tế và không kém thuận lợi hơn so với những điều mà Bên ký kết đó dành cho công dân hoặc công ty của bất kỳ nước thứ ba nào.

c) Tất cả các điều khoản của Hiệp định này liên quan đến việc cho hưởng sự đối xử không kém thuận lợi hơn so với những điều dành cho công dân hoặc công ty của bất kỳ nước thứ ba nào sẽ được hiểu là sự đối xử như vậy sẽ được cho hưởng ngay và vô điều kiện.

2. Mỗi Bên ký kết sẽ tuân thủ thêm bất kỳ nghĩa vụ nào có liên quan đến đầu tư của công dân và công ty của Bên ký kết kia mà đã được thỏa thuận giữa các Bên ngoài những điều đã qui định cụ thể trong Hiệp định này.

Điều 5

Các điều khoản của Hiệp định này, liên quan đến việc cho hưởng sự đối xử không kém thuận lợi hơn so với sự đối xử dành cho các công dân hoặc công ty của bất kỳ nước thứ ba nào, sẽ không được hiểu là bắt buộc một Bên ký kết phải dành cho các công dân và công ty của Bên ký kết kia những lợi ích của mọi sự đối xử, biệt đãi hoặc ưu đãi mà Bên ký kết đó có thể dành cho :

a) Thành lập hoặc mở rộng một liên minh thuế quan hoặc một khu vực tự do thương mại hoặc một khu vực thuế quan chung hoặc một liên minh tiền tệ hoặc một hiệp hội hợp tác kinh tế khu vực ; hoặc

b) Thông qua một hiệp định có mục đích dẫn đến thành lập hoặc mở rộng một liên minh hoặc khu vực như vậy trong một khoảng thời gian hợp lý ; hoặc

c) Bất kỳ thỏa thuận nào đối với một nước thứ ba hoặc với các nước trong cùng khu vực địa lý nhằm thúc đẩy sự hợp tác khu vực trong các lĩnh vực kinh tế, xã hội, lao động, công nghiệp hoặc tiền tệ trong khuôn khổ của các dự án cụ thể ; hoặc

d) Dành cho một cá nhân hoặc công ty qui chế "người được khuyến khích" theo luật pháp của Thái Lan hoặc của Cộng hòa Xã hội chủ nghĩa Việt Nam về khuyến khích đầu tư ; hoặc

e) Bất kỳ hiệp định hoặc thỏa thuận quốc tế nào hoặc bất kỳ luật pháp trong nước nào, liên quan toàn bộ hoặc phần lớn đến việc đánh thuế.

Điều 6

1. a) Trong mọi trường hợp khi đầu tư của một công dân hoặc công ty của một Bên ký kết phải chịu, trực tiếp hoặc gián tiếp, bất kỳ biện pháp trưng thu nào, thì công dân hoặc công ty đó sẽ được dành trên lãnh thổ của Bên ký kết kia sự đối xử thỏa đáng và công bằng đối với các biện pháp như vậy. Một biện pháp như vậy sẽ không được thi hành ngoại trừ vì mục đích công và phải trả bồi thường. Bồi thường đó phải tương xứng, phải có khả năng thực hiện một cách hiệu quả, được tự do chuyển và phải được thực hiện không chậm trễ theo qui định của khoản 2, điều 8.

b) Tính hợp pháp của bất cứ sự trưng thu nào và số lượng và phương thức thanh toán bồi thường sẽ phải được xem xét theo thủ tục luật pháp nhất định.

2. Trường hợp một Bên ký kết trưng thu tài sản của một công ty được liên hiệp hoặc thành lập theo luật hiện hành trên lãnh thổ của mình, và ở đó công dân hoặc công ty của Bên ký kết kia có cổ phần, Bên ký kết đó sẽ bảo đảm rằng các khoản của đoạn (1) của Điều này được áp dụng mở rộng ở mức độ cần thiết để đảm bảo bồi thường như được qui định đối với công dân hoặc công ty của Bên ký kết kia, những người là chủ của các cổ phần đó.

3. Trường hợp đầu tư của công dân hoặc công ty của một Bên ký kết trên lãnh thổ của Bên ký kết kia bị thiệt hại do chiến tranh hoặc do xung đột vũ trang, cách mạng, tình trạng khẩn cấp, bạo loạn, khởi nghĩa hoặc bao động trên lãnh thổ của Bên ký kết kia, công dân hoặc công ty có liên quan sẽ được đối xử, liên quan đến việc hoàn trả, bồi thường hoặc các giai pháp khác, phù hợp với Luật pháp quốc tế và trong mọi trường hợp, không kém thuận lợi hơn so với sự đối xử trong hoàn canh như vậy dành cho công dân hoặc công ty của bất kỳ nước thứ ba nào.

4. Không ảnh hưởng đối với các qui định nêu trên của Điều này, các công dân và công ty của một Bên ký kết, đối với bất kỳ vấn đề nào được đề cập, sẽ được hưởng trên lãnh thổ của Bên ký kết kia sự đối xử không kém thuận lợi hơn so với đối xử dành cho các công dân và công ty của bất kỳ nước thứ ba nào.

Điều 7

Các công dân và công ty của một Bên ký kết có thể không được đòi hưởng lợi ích của chế độ đối xử quốc gia bằng cách đưa ra điều khoản nước được ưu đãi nhất như đã có trong Hiệp định này trừ khi Bên ký kết đó đồng ý trên cơ sở có đi có lại dành cho công dân và công ty của Bên ký kết kia được hưởng cùng sự đối xử đó.

Điều 8

1. Mỗi Bên ký kết sẽ dành cho các công dân và công ty của Bên ký kết kia, sau khi đã thực hiện nghĩa vụ trả thuế, được tự do chuyển :

a) Các khoản chia lời, lợi tức và các khoản thu nhập vãng lai khác ;

b) Lệ phí thu từ những quyền lợi vô hình ;

c) Những khoản trả định kỳ cho các khoản vay ;

d) Thanh toán một phần hoặc toàn bộ các khoản đầu tư ;

e) Bồi thường trả theo Điều 6 ;

f) Khoản thu nhập thông thường của các công dân Bên ký kết kia liên quan đến dự án đầu tư trên lãnh thổ của Bên ký kết này.

Mọi khoản chu chuyển theo Hiệp định này đều được thực hiện bằng đồng tiền chuyển đổi tự do với tỷ giá hối đoái chính thức ấn định trong ngày chu chuyển.

2. Trong những trường hợp thanh toán bồi thường những khoản tiền lớn theo Điều 6, bên ký kết Hiệp định hữu quan có thể đề nghị tiến hành chuyển theo nhiều đợt một cách hợp lý.

3. Trong tất cả những vấn đề nói ở Điều này mỗi Bên ký kết, trong bất kỳ trường hợp nào, sẽ dành cho các công dân và công ty của Bên ký kết kia sự đối xử không kém thuận lợi hơn so với đối xử dành cho các công dân và công ty của bất kỳ nước thứ ba nào.

Điều 9

1. Nếu Bên ký kết này hoặc một tổ chức được họ ủy nhiệm thực hiện thanh toán cho công dân hoặc công ty theo chính sách bảo hiểm đối với những rủi ro phi thương mại mà họ cấp cho bất kỳ đầu tư vốn nào hoặc một phần đầu tư trên lãnh thổ của Bên ký kết kia thì Bên ký kết kia sẽ công nhận :

a) Sự ủy nhiệm, theo luật pháp hoặc theo một giao dịch pháp lý, bất kỳ quyền khiếunại nào từ công dân hoặc công ty cho Bên ký kết này hoặc cho tổ chức được ủy nhiệm của họ.

b) Bên ký kết này hoặc tổ chức được ủy nhiệm của họ được thế quyền trong việc thực hiện các quyền và theo đuổi những khiếu nại của công dân hoặc công ty liên quan.

2. Bên ký kết này hoặc tổ chức được quyền ủy nhiệm của họ sẽ vì vậy mà có quyền, đòi, nếu họ muốn vậy, các quyền hoặc khiếu nại trên tới mức độ như người có quyền tín nhiệm của họ có quyền.

3. Nếu Bên ký kết này dành được những khoản tiền trong số tiền hợp pháp của Bên ký kết kia hay các khoản tín dụng theo ủy thác như nêu trong mục (a) của nhóm (1) Điều này, Bên ký kết này hoàn toàn có thể sử dụng những khoản tiền và tín dụng đó để đáp ứng nhu cầu chi tiêu trên lãnh thổ của Bên ký kết kia.

Điều 10

1. Các tranh chấp giữa các Bên ký kết liên quan tới việc giải thích và áp dụng Hiệp định này, nếu có thể, sẽ được giải quyết thông qua trao đổi ý kiến hoặc thương lượng.

2. Nếu trong thời gian 6 tháng các Bên ký kết không giải quyết được tranh chấp, thì việc tranh chấp sẽ được đưa ra tòa án trọng tài theo yêu cầu của một trong hai bên.

3- Tòa án trọng tài sẽ được thành lập cho từng trường hợp cụ thể như sau :

a) Mỗi Bên ký kết sẽ chỉ định một thành viên, và hai thành viên đó sẽ chọn một công dân của một nước thứ ba làm chủ tịch Tòa án, với sự chấp thuận của hai Bên ký kết.

b) Hai thành viên nói trên sẽ được chỉ định trong thời gian ba tháng và chủ tịch tòa án trong thời gian bốn tháng, tính từ ngày Bên ký kết này thông báo cho Bên kia biết và đề nghị của mình đưa tranh chấp ra Tòa án.

4- Nếu sau những thời gian ấn định theo khoản (3) của Điều nàymà việc chỉ định không thực hiện được, thì mỗi Bên ký kết, trong trường hợp không có thỏa thuận khác, có thể mời Chủ tịch Tòa án quốc tế để tiến hành sự chỉ định cần thiết đó. Nếu Chủ tịch là công dân của một Bên ký kết, hoặc không thực hiện được chức năng nói trên, thì Phó chủ tịch sẽ được mời để tiến hành sự chỉ định cần thiết đó. Nếu Phó chủ tịch là công dân của một Bên ký kết, hoặc cũng không thực hiện được chức năng nói trên, thì thành viên nào của tòa án quốc tế ở cương vi cao nhất mà không phải là công dân của một Bên ký kết sẽ được mời để tiến hành sự chỉ định cần thiết.

5- a) Tòa án trọng tài sẽ quyết định theo đa số phiếu. Quyết định có tính chất bắt buộc đối với cả hai bên ;

b) Việc đưa ra luật lệ khác nhau liên quan đến các chi phí thuộc thẩm quyền của Tòa án trọng tài, chi phí cho thành viên và đại diện trong tố tụng sẽ do mỗi Bên ký kết chịu, chi phí cho Chủ tịch và các chi phí còn lại sẽ chia đều cho hai Bên ký kết cùng chịu.

c) Đối với những vấn đề khác không quy định cụ thể trong mục (a) và (b) của khoản này, Tòa án sẽ xác định thủ tục riêng của mình.

Điều 11

Hiệp định này sẽ có hiệu lực sau 30 ngày kể từ ngày Chính phủ hai Bên ký kết thông báo cho nhau bằng văn bản đã hoàn thành các thủ tục luật pháp cần thiết theo Hiến pháp của hai nước để Hiệp định có hiệu lực.

Hiệp định sẽ có hiệu lực trong thời hạn đầu tiên là 10 năm. Sau đó nó sẽ tiếp tục có hiệu lực không thời hạn, mỗi Bên ký kết có quyền chấm dứt Hiệp định, sau khi đã thông báo bằng văn bản cho bên kia sớm trước mười hai tháng, sau khi Hiệp định đã thực hiện được chín năm. Tuy nhiên đối với đầu tư đã được chấp thuận trong khi Hiệp định đang có hiệu lực, thì những điều khoản của Hiệp định vẫn có hiệu lực trong thời gian mười năm kể từ ngày kết thúc Hiệp định.

Những người có tên dưới đây được chính phủ của các Bên ủy quyền, ký Hiệp định này.

Hiệp định này được làm tại Băng-cốc ngày 30 tháng 10 năm 1991 bằng tiếng Việt, tiếng Thái và tiếng Anh, tất cả các bản có giá trị như nhau. Trong trường hợp có sự khác nhau, thì văn bản tiếng Anh sẽ là bản chính xác nhất.

THAY MẶT CHÍNH PHỦ
CỘNG HÒA XÃ HỘI CHỦ NGHĨA
VIỆT NAM

Lê Văn Triết
Bộ trưởng Thương mại và Du lịch
nước Cộng hòa Xã hội Chủ nghĩa
Việt Nam.

THAY MẶT CHÍNH PHỦ
VƯƠNG QUỐC THÁI LAN

Arsa Sarasin
Bộ trưởng Ngoại giao
Vương quốc Thái Lan.

ความตกลง
ระหว่าง
รัฐบาลแห่งสาธารณรัฐสังคมนิยมเวียดนาม
กับ
รัฐบาลแห่งราชอาณาจักรไทย
เพื่อการส่งเสริมและคุ้มครองการลงทุน

รัฐบาลแห่งสาธารณรัฐสังคมนิยมเวียดนามและรัฐบาลแห่งราชอาณาจักรไทย ซึ่งต่อไปนี้เรียกว่า "ภาคีผู้ทำสัญญา"

ตระหนักว่า ความร่วมมือฉันเพื่อนบ้านที่ดีในด้านเศรษฐกิจและการค้าโดยการลงทุน จะส่งเสริมความเจริญก้าวหน้าเพื่อความผาสุกของประชาชนทั้งสองรัฐ

ปรารถนาที่จะ เสริมสร้างสภาวะที่เอื้ออำนวยสำหรับความร่วมมือทางเศรษฐกิจระหว่างกันให้มากขึ้น และโดยเฉพาะอย่างยิ่ง สำหรับการลงทุนโดยคนชาติและบริษัทของรัฐหนึ่งในอาณาเขตของอีกรัฐหนึ่ง บนพื้นฐานของการเคารพในเอกราชและอธิปไตยของกันและกัน ความเสมอภาคและผลประโยชน์ร่วมกัน

ตระหนักว่า การสนับสนุนและคุ้มครองการลงทุนซึ่งกันและกัน และการลงทุนภายใต้ความตกลงระหว่างประเทศ จะเพิ่มพูนความมั่งคั่งของรัฐทั้งสอง

จึงได้ตกลงกันดังต่อไปนี้

ข้อ 1

เพื่อความมุ่งประสงค์แห่งความตกลงนี้

1. คำว่า "คนชาติ" ให้หมายถึง บุคคลธรรมดาใดก็ตาม ที่มีสัญชาติของภาคีผู้ทำสัญญาฝ่ายใดฝ่ายหนึ่ง ตามกฎหมายที่มีผลใช้บังคับในอาณาเขตของภาคีผู้ทำสัญญาฝ่ายนั้น

2. คำว่า "บริษัท" ให้หมายถึง นิติบุคคลใดก็ตาม ซึ่งก่อตั้งหรือจัดตั้งขึ้นภายใต้กฎหมายที่มีผลใช้บังคับในอาณาเขตของภาคีผู้ทำสัญญาฝ่ายใดฝ่ายหนึ่ง ไม่ว่าจะจำกัดความรับผิด และไม่ว่าจะเพื่อทางกำไรเป็นเงินตรา หรือไม่ก็ตาม

3. คำว่า "การลงทุน" ให้หมายถึง สินทรัพย์ทุกชนิด รวมทั้งโดยเฉพาะอย่างยิ่ง แต่ไม่จำกัดเพียง :

(ก) สังหาริมทรัพย์ และอสังหาริมทรัพย์ และสิทธิในทรัพย์สินอื่นใด เช่น การจำนอง สิทธิยึดหน่วง หรือจำนำ

(ข) หุ้น พันธบัตร และหุ้นกู้ ในบริษัทไม่ว่าจัดตั้งขึ้น ณ ที่ใดก็ตาม หรือผลประโยชน์ในทรัพย์สินของบริษัทนั้น

(ค) สิทธิเรียกร้องให้ชดใช้เงิน หรือให้ปฏิบัติตามสัญญาซึ่งมีมูลค่าทางการเงิน

(ง) สิทธิในทรัพย์สินทางปัญญา เช่น สิทธิบัตร เครื่องหมายการค้า ชื่อเสียงการค้า และค่าความนิยม

(จ) สัมปทานทางธุรกิจ ซึ่งได้รับตามกฎหมายหรือตามสัญญา รวมทั้งสัมปทานในการค้นหา เพาะปลูก ขุด หรือแสวงประโยชน์จากทรัพยากรธรรมชาติ

4. คำว่า "ผลตอบแทน" ให้หมายถึง จำนวนเงินที่ได้รับจากการลงทุน และโดยเฉพาะแต่ไม่จำกัดเพียงกำไร ดอกเบี้ย ผลได้จากต้นทุน เงินปันผล ค่าสิทธิ หรือค่าธรรมเนียม

5. คำว่า "อาณาเขต" ให้หมายถึง อาณาเขตซึ่งภาคีผู้ทำสัญญามีอธิปไตย หรือเขตอำนาจ เหนืออาณาเขตนั้น และ

6. คำว่า "การเวนคืน" ให้รวมถึง การกระทำโดยอำนาจอธิปไตย ซึ่งมีผลเทียบเท่ากับการเวนคืน ตลอดจนมาตรการในการโอนกิจการเป็นของรัฐ

ข้อ 2

1. สิทธิประโยชน์ของความตกลงนี้ให้ใช้เฉพาะ ในกรณีที่การลงทุนโดยคนชาติหรือบริษัทของภาคีผู้ทำสัญญาฝ่ายหนึ่งในอาณาเขตของภาคีผู้ทำสัญญาอีกฝ่ายหนึ่ง ได้รับความเห็นชอบโดยเฉพาะเป็นลายลักษณ์อักษรโดยเจ้าหน้าที่ผู้มีอำนาจของภาคีผู้ทำสัญญาฝ่ายหลัง

2. คนชาติและบริษัทของภาคีผู้ทำสัญญาฝ่ายใดฝ่ายหนึ่ง จะยื่นขอรับความเห็นชอบเช่นว่านั้นสำหรับการลงทุนใดไม่ว่าจะได้กระทำก่อนหรือหลังการมีผลใช้บังคับของความตกลงนี้

ข้อ 3

1. โดยคำนึงถึงกฎหมาย แผน และนโยบายของตน ภาคีผู้ทำสัญญาแต่ละฝ่ายจะสนับสนุนและอำนวยความสะดวกแก่การลงทุนของคนชาติและบริษัทของภาคีผู้ทำสัญญาอีกฝ่ายหนึ่งในอาณาเขตของตน

2. การลงทุนของคนชาติหรือบริษัทของภาคีผู้ทำสัญญาฝ่ายหนึ่งในอาณาเขตของภาคีผู้ทำสัญญาอีกฝ่ายหนึ่ง จะได้รับการคุ้มครองและหลักประกันเป็นเนืองนิจเสมอตามกฎหมายของภาคีผู้ทำสัญญาฝ่ายหลัง

ข้อ 4

1. (ก) การลงทุน และผลตอบแทนจากการลงทุนนั้น ของคนชาติหรือบริษัทของภาคีผู้ทำสัญญาฝ่ายหนึ่งในอาณาเขตของภาคีผู้ทำสัญญาอีกฝ่ายหนึ่ง จะได้รับผลประติบัติที่เป็นธรรม

และยุติธรรม และไม่น้อยไปกว่าที่ได้ให้แก่การลงทุน และผลตอบแทนของคนชาติและบริษัทของรัฐที่สามใด ๆ

(ข) ภาคีผู้ทำสัญญาแต่ละฝ่ายจะให้ผลประติบัติต่อคนชาติหรือบริษัทของภาคีผู้ทำสัญญาอีกฝ่ายหนึ่งในอาณาเขตของตนเกี่ยวกับการจัดการ การใช้ การอุปโภค หรือการจำหน่ายจ่ายโอน การลงทุนของคนชาติหรือบริษัทของภาคีผู้ทำสัญญาอีกฝ่ายหนึ่งที่เป็นธรรมและยุติธรรม ทั้งนี้ โดยสอดคล้องกับหลักกฎหมายระหว่างประเทศ และไม่น้อยไปกว่าที่ได้ให้แก่คนชาติและบริษัทของรัฐที่สามใด ๆ

(ค) บทบัญญัติทั้งหลายของความตกลงนี้ที่เกี่ยวเนื่องกับการให้ผลประติบัติที่ไม่น้อยไปกว่าที่ได้ให้แก่คนชาติหรือบริษัทของรัฐที่สามใด ๆ ให้ตีความ ให้หมายความว่าผลประติบัตินั้นจะให้โดยพลันและโดยปราศจากเงื่อนไข

2. ภาคีผู้ทำสัญญาแต่ละฝ่ายจะปฏิบัติตามพันธกรณีใด ๆ ที่เพิ่มขึ้นจากที่ระบุไว้ในความตกลงนี้ ซึ่งภาคีผู้ทำสัญญาอาจก่อให้เกิดขึ้นเกี่ยวกับการลงทุนของคนชาติหรือบริษัทของภาคีผู้ทำสัญญาอีกฝ่ายหนึ่ง

ข้อ 5

บทบัญญัติแห่งความตกลงนี้ที่เกี่ยวกับการให้ผลประติบัติที่ไม่น้อยไปกว่าที่ได้ให้แก่คนชาติหรือบริษัทของรัฐที่สามใด ๆ จะไม่แปลความให้เป็นการบังคับภาคีผู้ทำสัญญาฝ่ายหนึ่งให้ขยายการให้ผลประติบัติแก่คนชาติหรือบริษัทของภาคีผู้ทำสัญญาอีกฝ่ายหนึ่งซึ่งสิทธิประโยชน์จากผลประติบัติ บุริมสิทธิ หรือเอกสิทธิ์ใด ๆ ที่ภาคีผู้ทำสัญญาฝ่ายแรกอาจให้โดยเนื่องมาจาก

(ก) การก่อตั้งหรือการขยายสหภาพศุลกากร หรือเขตการค้าเสรี หรือเขตร่วมใช้พิกัดภายนอก หรือสหภาพทางการเงิน หรือสมาคมส่วนภูมิภาคเพื่อความร่วมมือทางเศรษฐกิจ หรือ

(ข) การรับเอาความตกลงซึ่งมุ่งหมายที่จะนำไปสู่การก่อตั้ง หรือการขยายสหภาพ หรือเขตเช่นว่านั้นภายในระยะเวลาอันสมควร หรือ

(ค) ข้อตกลงใด ๆ กับประเทศที่สามหนึ่งหรือหลายประเทศที่มีอยู่ในภูมิภาคทางภูมิศาสตร์เดียวกัน ซึ่งมุ่งหมายที่จะส่งเสริมความร่วมมือในภูมิภาคทางด้านเศรษฐกิจ สังคม แรงงาน อุตสาหกรรม หรือการเงินภายในกรอบของโครงการเฉพาะต่าง ๆ หรือ

(ง) การให้สถานภาพเป็น "บุคคลผู้ได้รับการส่งเสริม" แก่บุคคลหรือบริษัทใดโดยเฉพาะ ตามกฎหมายว่าด้วยการส่งเสริมการลงทุนของประเทศไทย หรือของสาธารณรัฐสังคมนิยมเวียดนาม

(จ) ความตกลงหรือข้อตกลงระหว่างประเทศ หรือกฎหมายภายในใด ๆ ที่เกี่ยวข้องทั้งหมดหรือส่วนใหญ่กับการเก็บภาษีอากร

ข้อ 6

1. (ก) ในกรณีใด ๆ ที่การลงทุนของคนชาติหรือบริษัทของภาคีผู้ทำสัญญาฝ่ายหนึ่งอยู่ภายใต้บังคับแห่งมาตรการเวนคืนใด ๆ จะโดยตรงหรือโดยอ้อม คนชาติหรือบริษัทที่เกี่ยวข้องจะได้รับผลประติบัติที่เป็นธรรมและยุติธรรมในอาณาเขตของภาคีผู้ทำสัญญาอีกฝ่ายหนึ่งในส่วนที่เกี่ยวข้องกับ

มาตรการใด ๆ เช่นว่านั้น ภาคีผู้ทำสัญญาจะไม่ใช้มาตรการเช่นนั้นเว้นแต่เพื่อวัตถุประสงค์อันเป็นการสาธารณะและโดยมีการจ่ายเงินค่าทดแทน เงินค่าทดแทนเช่นว่านั้นจะต้องเพียงพอ บังเกิดผลอย่างแท้จริง สามารถโอนได้โดยเสรี และจ่ายให้โดยไม่ชักช้า โดยสอดคล้องกับวรรค 2 ของข้อ 8

(ข) ความถูกต้องตามกฎหมายของการเวนคืนใด ๆ และของจำนวนเงินกับวิธีการจ่ายเงินค่าทดแทน จะต้องมีการทบทวนโดยกระบวนการทางกฎหมายที่เหมาะสม

2. ในกรณีที่ภาคีผู้ทำสัญญาฝ่ายหนึ่งเวนคืนทรัพย์สินของบริษัทซึ่งก่อตั้งหรือจัดตั้งภายใต้กฎหมายที่มีผลใช้บังคับในอาณาเขตของตน และคนชาติหรือบริษัทของภาคีผู้ทำสัญญาอีกฝ่ายหนึ่งเป็นเจ้าของหุ้น ภาคีผู้ทำสัญญาให้ประกันว่าบทบัญญัติในวรรค 1 ของข้อนี้จะใช้บังคับเท่าที่จำเป็นเพื่อประกันให้มีการจ่ายค่าทดแทนตามที่ระบุไว้นั้นแก่คนชาติหรือบริษัทของภาคีคู่สัญญาอีกฝ่ายหนึ่งซึ่งเป็นเจ้าของหุ้นนั้น

3. ในกรณีที่การลงทุนของคนชาติหรือบริษัทของภาคีผู้ทำสัญญาฝ่ายหนึ่งได้รับความสูญเสียอันเนื่องมาจากสงครามหรือการขัดกันด้วยอาวุธ การปฏิวัติ สภาวะฉุกเฉินของชาติ การก่อกบฏ การต่อต้านรัฐบาล หรือการจลาจล ในอาณาเขตของภาคีผู้ทำสัญญาอีกฝ่ายหนึ่ง คนชาติหรือบริษัทที่เกี่ยวข้องนั้นจะได้รับผลประติบัติเกี่ยวกับเรื่องการใช้คืน การชดใช้ การจ่ายค่าทดแทน หรือการระงับแก้ไขอื่น ๆ ตามกฎหมายระหว่างประเทศทั่วไป และไม่ว่าในกรณีใด ๆ จะต้องไม่น้อยไปกว่าที่ได้ให้แก่คนชาติหรือบริษัทของรัฐที่สามใด ๆ ในสถานการณ์เช่นเดียวกัน

4. โดยไม่กระทบกระเทือนต่อข้อบทข้างต้นของข้อนี้ คนชาติและบริษัทของภาคีผู้ทำสัญญาฝ่ายหนึ่งจะต้องได้รับผลประติบัติในเรื่องใด ๆ ที่กล่าวถึงในข้อบทนั้น ในอาณาเขตของภาคีผู้ทำสัญญาอีกฝ่ายหนึ่งที่ไม่น้อยไปกว่าที่ให้แก่คนชาติและบริษัทของรัฐที่สามใด ๆ

ข้อ 7

สิทธิประโยชน์ของผลประติบัติเยี่ยงคนชาติจะไม่อาจเรียกร้องโดยคนชาติหรือบริษัทของภาคีผู้ทำสัญญาฝ่ายใดฝ่ายหนึ่ง โดยอ้างข้อบทที่ว่าด้วยชาติที่ได้รับความอนุเคราะห์ยิ่งตามที่กำหนดไว้ในความตกลงนี้ได้ เว้นแต่ว่าภาคีผู้ทำสัญญาฝ่ายนั้นจะตกลงที่จะให้ผลประติบัติเช่นเดียวกันเป็นการต่างตอบแทนแก่คนชาติหรือบริษัทของภาคีผู้ทำสัญญาอีกฝ่ายหนึ่ง

ข้อ 8

1. ภาคีผู้ทำสัญญาแต่ละฝ่ายจะอนุญาตให้คนชาติและบริษัทของภาคีผู้ทำสัญญาอีกฝ่ายหนึ่งโอนโดยเสรีภายหลังจากได้ปฏิบัติตามพันธกรณีทางภาษีอากรแล้ว สำหรับ

(ก) เงินปันผล กำไร และรายได้ประจำวันอื่น ๆ

(ข) ค่าธรรมเนียมจากสิทธิต่าง ๆ

(ค) การชำระคืนเงินกู้เป็นงวด ๆ

(ง) การชำระบัญชีบางส่วนหรือทั้งหมดของการลงทุน

(จ) ค่าทดแทนที่จ่ายตามข้อ 6 และ

(ฉ) รายได้ปกติของคนชาติของภาคีผู้ทำสัญญาอีกฝ่ายหนึ่งที่เกี่ยวกับการลงทุนในอาณาเขตของภาคีผู้ทำสัญญาฝ่ายแรก

การโอนใด ๆ ภายใต้ความตกลงนี้ ให้กระทำในเงินตราสกุลที่สามารถแลกเปลี่ยนได้โดยเสรี ในอัตราแลกเปลี่ยนทางการที่ใช้อยู่ในวันโอน

2. ในกรณีที่ มีการจ่ายเงินค่าทดแทนเป็นจำนวนมากตามข้อ 6 ภาคีผู้ทำสัญญาที่เกี่ยวข้องอาจขอให้การโอนเงินดังกล่าวกระทำเป็นงวด ๆ ตามจำนวนที่สมเหตุสมผลก็ได้

3. ในทุกเรื่องที่กล่าวถึงในข้อนี้ ภาคีผู้ทำสัญญาแต่ละฝ่ายจะให้ผลประติบัติต่อคนชาติและบริษัทของภาคีผู้ทำสัญญาอีกฝ่ายหนึ่งซึ่งไม่ว่าในกรณีใดก็ตาม ไม่น้อยกว่าที่ได้ให้แก่คนชาติและบริษัทของรัฐที่สามใด ๆ

ข้อ 9

1. ถ้าภาคีผู้ทำสัญญาฝ่ายใดฝ่ายหนึ่ง หรือตัวแทนที่ฝ่ายนั้นแต่งตั้งขึ้นจ่ายเงินให้แก่คนชาติหรือบริษัทหนึ่ง ๆ ตามกรมธรรม์ประกันภัยสำหรับการเสี่ยงภัยอันมิใช่ในทางพาณิชย์ ซึ่งได้ให้ไว้เกี่ยวกับการลงทุนด้วยเงินทุนหรือส่วนหนึ่งส่วนใดของการลงทุนนั้น ในอาณาเขตของภาคีผู้ทำสัญญาอีกฝ่ายหนึ่ง ภาคีผู้ทำสัญญาฝ่ายหลังจะยอมรับ

(ก) การโอนไม่ว่าจะเป็นตามกฎหมายหรือตามนิติกรรม ซึ่งสิทธิหรือสิทธิเรียกร้องใด ๆ จากคนชาติหรือบริษัทเช่นว่านั้นให้แก่ภาคีผู้ทำสัญญาฝ่ายแรกหรือตัวแทนที่ภาคีผู้ทำสัญญาฝ่ายนั้นแต่งตั้ง

(ข) ภาคีผู้ทำสัญญาฝ่ายแรกหรือตัวแทนที่ภาคีฝ่ายนั้นแต่งตั้งมีสิทธิโดยการสรวมสิทธิที่จะใช้และบังคับใช้สิทธิเรียกร้องของคนชาติหรือบริษัทนั้น

2. ภาคีผู้ทำสัญญาฝ่ายแรกหรือตัวแทนที่แต่งตั้งโดยภาคีผู้ทำสัญญาฝ่ายนั้น จะมีสิทธิตามนั้นที่จะใช้สิทธิหรือสิทธิเรียกร้องใด ๆ ดังกล่าวได้ถ้ามีความประสงค์ในขอบเขตเดียวกับผู้ที่มีสิทธิอยู่ก่อนซึ่งตนเข้าสรวมสิทธิ

3. ถ้าภาคีผู้ทำสัญญาฝ่ายแรกได้รับเงินจำนวนใดมาเป็นเงินตราในสกุลที่ชอบด้วยกฎหมายของภาคีผู้ทำสัญญาอีกฝ่ายหนึ่ง หรือสินเชื่อจากเงินดังกล่าวเนื่องจากการโอนสิทธิตามอนุวรรค (ก) ของวรรค 1 ของข้อนี้ จำนวนเงินและสินเชื่อนั้นจะต้องมีไว้ให้ภาคีผู้ทำสัญญาฝ่ายแรกเพื่อวัตถุประสงค์ในการเสียค่าใช้จ่ายในอาณาเขตของภาคีผู้ทำสัญญาฝ่ายหลังโดยเสรี

ข้อ 10

1. ข้อพิพาทระหว่างภาคีผู้ทำสัญญาเกี่ยวกับการตีความหรือการใช้ความตกลงนี้ ถ้าเป็นไปได้ให้ระงับโดยการปรึกษาหารือหรือการเจรจากัน

2. ถ้าข้อพิพาทระหว่างภาคีผู้ทำสัญญาไม่สามารถระงับลงได้ภายในเวลาหกเดือน ภาคีผู้ทำสัญญาฝ่ายใดฝ่ายหนึ่งจะร้องขอให้เสนอข้อพิพาทนั้นต่อคณะอนุญาโตตุลาการ

3. คณะอนุญาโตตุลาการเช่นว่านั้นให้จัดตั้งขึ้นสำหรับแต่ละกรณีดังนี้

(ก) ให้ภาคีผู้ทำสัญญาแต่ละฝ่ายแต่งตั้งสมาชิกหนึ่งคน และหลังจากนั้นให้สมาชิกทั้งสองนี้เลือกคนชาติของรัฐที่สามซึ่งเมื่อได้รับความเห็นชอบจากภาคีผู้ทำสัญญาทั้งสองฝ่ายจะได้รับแต่งตั้งให้เป็นประธานคณะอนุญาโตตุลาการ

(ข) ให้แต่งตั้งสมาชิกดังกล่าวภายในสามเดือน และประธานภายในสี่เดือน นับแต่วันที่ภาคีผู้ทำสัญญาฝ่ายใดฝ่ายหนึ่งจะได้บอกกล่าวแก่ภาคีผู้ทำสัญญาอีกฝ่ายหนึ่งว่าตนเสนอให้เสนอข้อพิพาทต่อคณะอนุญาโตตุลาการ

4. ถ้าภายในกำหนดเวลาที่ระบุในวรรค 3 ของข้อนี้ ยังไม่มีการแต่งตั้งที่จำเป็น ภาคีผู้ทำสัญญาฝ่ายใดฝ่ายหนึ่งอาจเชิญประธานศาลยุติธรรมระหว่างประเทศทำการแต่งตั้งที่จำเป็นนั้นได้ ในกรณีที่ไม่มีความตกลงในเรื่องนี้เป็นอย่างอื่น ถ้าประธานฯ เป็นคนชาติของภาคีผู้ทำสัญญาฝ่ายใดฝ่ายหนึ่งหรือมีเหตุที่ทำให้ไม่สามารถปฏิบัติหน้าที่ดังกล่าวได้ ก็ให้เชิญรองประธานฯ ให้ทำการแต่งตั้งที่จำเป็นนั้น ถ้ารองประธานฯ ก็เป็นคนชาติของภาคีผู้ทำสัญญาฝ่ายใดฝ่ายหนึ่งหรือมีเหตุที่ทำให้ไม่สามารถปฏิบัติหน้าที่ดังกล่าวได้เช่นกัน ก็ให้เชิญสมาชิกศาลยุติธรรมระหว่างประเทศผู้มีอาวุโสลำดับถัดไปซึ่งมิได้เป็นคนชาติของภาคีผู้ทำสัญญาฝ่ายใดฝ่ายหนึ่งทำการแต่งตั้งที่จำเป็นนั้น

5. (ก) การตัดสินของคณะอนุญาโตตุลาการให้กระทำโดยเสียงข้างมาก คำตัดสินเช่นว่านั้นจะมีผลผูกพันภาคีผู้ทำสัญญาทั้งสองฝ่าย

(ข) ภายใต้บังคับแห่งอำนาจของคณะอนุญาโตตุลาการที่จะวินิจฉัยชี้ขาดเป็นอย่างอื่นเกี่ยวกับค่าใช้จ่าย บรรดาค่าใช้จ่ายทั้งหลายของสมาชิกคณะอนุญาโตตุลาการของฝ่ายตนและของการเข้าร่วมของฝ่ายตน ในกระบวนการพิจารณาทางอนุญาโตตุลาการ ให้ภาคีผู้ทำสัญญาแต่ละฝ่ายเป็นผู้รับภาระ และค่าใช้จ่ายของประธานฯ และค่าใช้จ่ายส่วนที่เหลือ ให้ภาคีผู้ทำสัญญาทั้งสองฝ่ายรับภาระเป็นส่วนที่เท่า ๆ กัน

(ค) ในเรื่องทั้งปวงที่นอกเหนือจากที่ได้ระบุไว้ในอนุวรรค (ก) และ (ข) ของวรรคนี้ คณะอนุญาโตตุลาการจะกำหนดวิธีพิจารณาของตนเอง

ข้อ 11

ความตกลงนี้ จะเริ่มมีผลใช้บังคับสามสิบวันหลังจากวันที่ภาคีผู้ทำสัญญาทั้งสองฝ่ายได้แจ้งให้กันและกันทราบว่าได้ปฏิบัติตามกระบวนการตามรัฐธรรมนูญของตนเพื่อให้ความตกลงนี้เริ่มมีผลใช้บังคับแล้วโดยครบถ้วน ความตกลงนี้จะมีผลใช้บังคับสำหรับช่วงระยะเวลาแรกเริ่มเป็นเวลาสิบปี หลังจากนั้นจะมีผลใช้บังคับต่อไปอีกโดยไม่มีกำหนด ทั้งนี้ ภายใต้บังคับของสิทธิของภาคีผู้ทำสัญญาฝ่ายใดฝ่ายหนึ่งที่จะบอกเลิกเป็นลายลักษณ์อักษรไปยังภาคีผู้ทำสัญญาอีกฝ่ายหนึ่งล่วงหน้าเป็นเวลาสิบสองเดือน การแจ้งดังกล่าวจะกระทำเมื่อใดก็ได้หลังจาก

การสิ้นสุดของปีที่เก้า อย่างไรก็ตาม ในส่วนที่เกี่ยวกับการลงทุนใดที่ได้รับความเห็นชอบในขณะที่ความตกลงนี้มีผลใช้บังคับอยู่ ข้อบทของความตกลงนี้จะยังคงมีผลต่อไปอีกเป็นระยะเวลาสิบปี นับจากวันสิ้นสุดของความตกลงนี้

เพื่อเป็นพยานแก่การนี้ ผู้ลงนามข้างท้ายนี้ซึ่งได้รับมอบอำนาจโดยถูกต้องจากรัฐบาลของตน ตามลำดับ ได้ลงนามความตกลงนี้

กระทำ ณ กรุงเทพมหานคร เมื่อวันที่ 30 ตุลาคม ค.ศ. 1991 เป็นคู่ฉบับ เป็นภาษาเวียดนาม ภาษาไทย และภาษาอังกฤษ ตัวบททุกฉบับใช้เป็นหลักฐานได้เท่าเทียมกัน ในกรณีที่มีความแตกต่างกันให้ใช้ตัวบทฉบับภาษาอังกฤษเป็นเกณฑ์

ในนามรัฐบาลแห่งสาธารณรัฐสังคมนิยมเวียดนาม

(นายเลอ วัน เตรียด)
รัฐมนตรีว่าการกระทรวงการค้าและการท่องเที่ยว

ในนามรัฐบาลแห่งราชอาณาจักรไทย

(นายอาสา สารสิน)
รัฐมนตรีว่าการกระทรวงการต่างประเทศ

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM

AND

THE GOVERNMENT OF THE KINGDOM OF THAILAND

FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Socialist Republic of Vietnam and the Government of the Kingdom of Thailand, hereinafter called "Contracting Parties",

RECOGNIZING that the good neighbourly cooperation in the fields of economics and trade through investments will promote progressive development for the well-being of the peoples of both States,

DESIRING to create favourable conditions for greater economic cooperation between them and, in particular, for the investment of capital by nationals and companies of one State in the territory of the other State on the basis of respect for the independence and sovereignty of each other, equality and mutual benefit,

RECOGNIZING that the reciprocal encouragement and protection of such investment of capital and the investment under international agreement will increase prosperity in both States,

HAVE agreed as follows :

ARTICLE 1

For the purposes of this Agreement :

1. the term "national" shall mean any natural person who possesses the nationality of either Contracting Party in accordance with the law in force in the territory of that Contracting Party;

2. the term "companies" shall mean any juridical persons incorporated or constituted under the law in force in the territory of either Contracting Party whether or not with limited liability and whether or not for pecuniary profit;

3. the term "investment" shall mean every kind of assets, including in particular, but not exclusively :

(a) movable and immovable property and any other property rights such as mortgages, liens or pledges,

(b) shares, stock and debentures of companies wherever incorporated or interests in the property of such companies,

(c) claims to money or to any performance under contract having financial value,

(d) intellectual property rights, such as patents, trade-marks, trade-name and good-will,

(e) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

4. the term "returns" shall mean the amounts yielded by an investment and, in particular, though not exclusively, shall include profit, interest, capital gains, dividends, royalties or fees;

5. the term "territory" shall mean territory over which Contracting Party has sovereignty or jurisdiction; and

6. the term "expropriation" shall also include acts of sovereign power which are tantamount to expropriation, as well as measures of nationalization.

ARTICLE 2

1. The benefits of this Agreement shall apply only in cases where the investment of capital by the nationals and companies of one Contracting Party in the territory of the other Contracting Party has been specifically approved in writing by the competent authority of the latter Contracting Party.

2. Nationals and companies of either Contracting Party shall apply for such approval in respect of any investment of capital whether made before or after the entry into force of this Agreement.

ARTICLE 3

1. Each Contracting Party shall, having regard to its laws, plans and policies, encourage and facilitate the investment of capital in its territory by the nationals and companies of the other Contracting Party.

2. Investments of nationals or companies of one Contracting Party in the territory of the other Contracting Party shall enjoy the most constant protection and security under the law of the latter Contracting Party.

ARTICLE 4

1. (a) Investments of nationals or companies of one Contracting Party in the territory of the other Contracting Party, and the returns therefrom, shall receive treatment which is fair and equitable and not less favourable than that accorded in respect of the investments and returns of the nationals and companies of any third State.

(b) Each Contracting Party shall in its territory accord to nationals or companies of the other Contracting Party

as regards the management, use, enjoyment or disposal of their investments, treatment which is fair and equitable, in conformity with the principles of international law and not less favourable than that which it accords to the nationals and companies of any third State.

(c) All the provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals or companies of any third State shall be interpreted as meaning that such treatment shall be accorded immediately and unconditionally.

2. Each Contracting Party shall observe any obligation, additional to those specified in this Agreement, into which it may have entered with regard to investments of nationals or companies of the other Contracting Party.

ARTICLE 5

The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals or companies of any third State shall not be

construed so as to oblige one Contracting Party to extend to the nationals or companies of the other Contracting Party the benefit of any treatment, preference or privileges which may be extended by the former Contracting Party by virtue of:

(a) the formation or extension of a customs union or a free trade area or a common external tariff area or a monetary union or a regional association for economic cooperation; or

(b) the adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or

(c) any arrangement with a third country or countries in the same geographical region designed to promote regional cooperation in the economic, social, labour, industrial or monetary fields within the framework of specific projects; or

(d) the grant to a particular person or company of the status of a "promoted person" under the laws of Thailand or of the Socialist Republic of Vietnam on the promotion of investment; or

(e) any international agreement or arrangement, or any domestic legislation, relating wholly or mainly to taxation.

ARTICLE 6

1. (a) In any case where investments of a national or company of one Contracting Party are subject, directly or indirectly, to any measure of expropriation, the national or company concerned shall be accorded in the territory of the other Contracting Party fair and equitable treatment in relation to any such measure. No such measure shall be taken except for public purposes and against payment of compensation. Such compensation shall be adequate, shall be effectively realizable, shall be freely transferable and shall be made without delay in conformity with paragraph 2 of Article 8.

(b) The legality of any expropriation and the amount and method of payment of compensation shall be subject to review by due process of law.

2. Where a Contracting Party expropriates assets of a company which is incorporated or constituted under the law in force in its territory, and in which a national

or company of the other Contracting Party owns shares, it shall ensure that the provisions of paragraph 1 of this Article are applied to the extent necessary to guarantee compensation as specified therein to such national or company of the other Contracting Party who is the owner of those shares.

3. Where investments of a national or company of one Contracting Party in the territory of the other Contracting Party suffer loss owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the other Contracting Party, the national or company concerned shall be accorded treatment, as regards restitution, indemnification, compensation or other settlement, in conformity with general international law and, in any event, not less favourable than would be accorded in the same circumstances to a national or company of any third State.

4. Without prejudice to the foregoing provisions of this Article, the nationals and companies of one Contracting Party shall, in respect of any matter dealt with therein, be accorded in the territory of the other Contracting Party treatment not less favourable than that accorded to the nationals and companies of any third State.

ARTICLE 7

The benefit of national treatment may not be claimed by the nationals and companies of either Contracting Party by invoking the most-favoured-nation clause as contained in this Agreement unless that Contracting Party agrees to accord the same treatment by way of reciprocity to the nationals and companies of the other Contracting Party.

ARTICLE 8

1. Each Contracting Party shall grant to the nationals and companies of the other Contracting Party, after the performance of tax obligations, free transfer of:

(a) dividends, profits and other current incomes;

(b) fees from intangible rights;

(c) instalment payments of loans;

(d) partial or total clearances of investments;

(e) compensation paid in pursuance of Article 6; and

(f) normal earnings of nationals of the other Contracting Party in connection with an investment in the territory of the former Contracting Party.

Any transfer under this Agreement shall be made in freely convertible currency at the prevailing official rate of exchange on the date of the transfer.

2. In cases where large amounts of compensation have been paid in pursuance of Article 6, the Contracting Party concerned may require the transfer thereof to be effected in reasonable instalments.

3. In all matters dealt with in this Article each Contracting Party shall, in any event, grant to the nationals and companies of the other Contracting Party treatment not less favourable than that accorded to the nationals and companies of any third State.

ARTICLE 9

1. If either Contracting Party or an agency designated by it makes payment to a national or company under a policy of insurance covering non-commercial risks, which it has given in respect of any investment of capital or any part thereof in the territory of the other Contracting Party, the latter Contracting Party shall recognize :

(a) the assignment, whether under the law or pursuant to a legal transaction, of any right of claim from such a national

or company to the former Contracting Party or its designated agency; and

(b) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of such a national or company.

2. The former Contracting Party or its designated agency shall, accordingly, be entitled to assert, if it so desires, any such right or claim to the same extent as its predecessor in title.

3. If the former Contracting Party acquires amounts in the lawful currency of the other Contracting Party or credits thereof by virtue of an assignment under subparagraph (a) of paragraph 1, of this Article such amounts and credits shall be freely available to the former Contracting Party for the purpose of meeting its expenditure in the territory of the latter Contracting Party.

ARTICLE 10

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultation or negotiation.

2. If a dispute between the Contracting Parties can not thus be settled within six months, it shall at the request of either Contracting Party, be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case as follows :

(a) each Contracting Party shall appoint one member, and these two members shall then select a national of a third State who, on approval by the two Contracting Parties, shall be appointed Chairman of the tribunal;

(b) the said members shall be appointed within three months, and the Chairman within four months, from the date on which either Contracting Party shall have informed the other Contracting Party that it proposes to submit the dispute to an arbitral tribunal.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other relevant agreement, invite the President of the

International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he, too, is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. (a) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties.

(b) Subject to the power of the arbitral tribunal to give a different ruling concerning costs, the cost of its own member and of its representation in the arbitral proceedings shall be borne by each Contracting Party and the cost of the Chairman and the remaining costs shall be borne in equal parts by the two Contracting Parties.

(c) In all respects other than those specified in subparagraphs (a) and (b) of this paragraph, the arbitral tribunal shall determine its own procedure.

ARTICLE 11

This Agreement shall enter into force thirty days after the date on which the Contracting Parties shall have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled. It shall remain in force for an initial period of ten years. It shall thereafter continue to be in force indefinitely, subject to the right of either Contracting Party to terminate it by twelve months' prior notice in writing to the other Contracting Party, which notice may be given at any time after the expiry of the ninth year. However, with respect to an investment approved while the Agreement is in force its provisions shall continue to have effect for a period of ten years from the date of its termination.

IN WITNESS WHEREOF, the Undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE at Bangkok, on this 30th day of October, A.D. 1991, in duplicate, in the Vietnamese, Thai and English languages, all texts being equally authentic. In case of divergency, the English text shall prevail.

For the Government of
the Socialist Republic
of Vietnam

(H.E. Mr. Le Van Triet)
Minister of Trade and Tourism

For the Government of
the Kingdom of Thailand

(H.E. Mr. Arsa Sarasin)
Minister of Foreign Affairs