

CHAPTER 1

OBJECTIVES AND GENERAL DEFINITIONS

ARTICLE 1.1

Objective

The objective of this Agreement is to enhance the investment relations between the Parties in accordance with the provisions of this Agreement.

ARTICLE 1.2

Definitions

For the purposes of this Agreement:

- (a) "natural person of a Party" means, in the case of the EU Party, a national of one of the Member States of the Union in accordance with its domestic laws<sup>1</sup> and regulations and, in the case of Viet Nam, a national of Viet Nam in accordance with its domestic laws and regulations;

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<sup>1</sup> The term "natural person" includes natural persons permanently residing in Latvia who are not citizens of Latvia or any other state but who are entitled, under the laws and regulations of Latvia, to receive a non-citizen's passport (Alien's Passport).

- (b) "juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (c) "juridical person of a Party" means a juridical person of the EU Party or a juridical person of Viet Nam, set up in accordance with the domestic laws and regulations of a Member State of the Union, or of Viet Nam, respectively, and engaged in substantive business operations<sup>1</sup> in the territory of the Union or of Viet Nam, respectively;

a juridical person is:

- (i) "owned" by natural or juridical persons of one of the Parties if more than 50 per cent of the equity interest in it is beneficially owned by persons of the EU Party, or of Viet Nam, respectively; or

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<sup>1</sup> In line with its notification of the Treaty establishing the European Community to the World Trade Organization (WT/REG39/1), the Union and its Member States understand that the concept of "effective and continuous link" with the economy the Union enshrined in Article 54 of the Treaty on the Functioning of the European Union is equivalent to the concept of "substantive business operations". Accordingly, for a juridical person set up in accordance with the laws and regulations of Viet Nam and having only its registered office or central administration in the territory of Viet Nam, the Union and its Member States shall only apply the benefits of this Agreement if that juridical person possesses an effective and continuous link with the economy of Viet Nam.

- (ii) "controlled" by natural or juridical persons of one of the Parties if persons of the EU Party, or of Viet Nam, respectively, have the power to name a majority of its directors or otherwise to legally direct its actions;
  
- (d) "services supplied and activities performed in the exercise of governmental authority" means services supplied or activities performed neither on a commercial basis nor in competition with one or more economic operators;
  
- (e) "economic activities" includes activities of an industrial, commercial and professional character and activities of craftsmen, but do not include services supplied or activities performed in the exercise of governmental authority;
  
- (f) "operation" means, with respect to an investment, the conduct, management, maintenance, use, enjoyment, sale or other forms of disposal of the investment;<sup>1</sup>
  
- (g) "measures adopted or maintained by a Party" means measures taken by:
  - (i) central, regional or local governments and authorities; and
  
  - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

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<sup>1</sup> For greater certainty, this does not include steps taking place at the time of or before the procedures required for making the related investment are completed in accordance with the applicable laws and regulations.

- (h) "investment" means every kind of asset which is owned or controlled, directly or indirectly, by an investor of a Party in the territory<sup>1</sup> of the other Party, which has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, the assumption of risk and a certain duration; forms that an investment may take include:
- (i) tangible or intangible, movable or immovable property, as well as any other property rights, such as leases, mortgages, liens and pledges;
  - (ii) an enterprise<sup>2</sup> as well as shares, stocks and other forms of equity participation in an enterprise, including rights derived therefrom;
  - (iii) bonds, debentures, and loans and other debt instruments, including rights derived therefrom;
  - (iv) turnkey, construction, management, production, concession, revenue-sharing and other similar contracts;

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<sup>1</sup> For greater certainty, the territory of a Party includes its exclusive economic zone and continental shelf, as provided for under *United Nations Convention on the Law of the Sea*, done at Montego Bay on 10 December 1982 (hereinafter referred to as the "UNCLOS").

<sup>2</sup> For the purpose of the definition of "investment", an "enterprise" does not include a representative office. For greater certainty, the fact that a representative office is established in the territory of a Party is not in itself considered that there is an investment.

(v) claims to money or to other assets or any contractual performance having an economic value;<sup>1</sup> and

(vi) intellectual property rights<sup>2</sup> and goodwill;

returns that are invested shall be treated as investments provided that they have the characteristics of an investment and any alteration of the form in which assets are invested or reinvested shall not affect their qualification as investments as long as they maintain the characteristics of an investment;

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<sup>1</sup> For greater certainty, claims to money do not include claims to money that arise solely from commercial contracts for the sale of goods or services by a natural or juridical person in the territory of a Party to a natural or juridical person in the territory of the other Party, or financing of such contract other than a loan covered by subparagraph (iii), or any related order, judgement, or arbitral award.

<sup>2</sup> For the purposes of this Agreement, intellectual property rights refer at least to all categories of intellectual property that are referred to in Sections 1 to 7 of Part II of the TRIPS Agreement, namely:

- (a) copyright and related rights;
- (b) trademarks;
- (c) geographical indications;
- (d) industrial designs;
- (e) patent rights;
- (f) layout-designs (topographies) of integrated circuits;
- (g) protection of undisclosed information; and
- (h) plant varieties.

- (i) "investor of a Party" means a natural person of a Party or a juridical person of a Party who has made an investment in the territory of the other Party;
- (j) "returns" means all amounts yielded by or derived from an investment or reinvestment, including profits, dividends, capital gains, royalties, interest, payments in connection with intellectual property rights, payments in kind and all other lawful income;
- (k) "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;
- (l) "person" means a natural person or a legal person;
- (m) "third country" means a country or territory outside the scope of territorial application of this Agreement as defined in Article 4.22 (Territorial Application);
- (n) "EU Party" means the Union or its Member States or the Union and its Member States within their respective areas of competence as derived from the Treaty on the European Union and the Treaty on the Functioning of the European Union;
- (o) "Party" means the EU Party or Viet Nam;

- (p) "domestic" means with regard to legislation, law or laws and regulations for the Union and its Member States<sup>1</sup> and for Viet Nam, respectively, legislation, law or laws and regulations at central, regional or local level; and
  
- (q) "covered investment" means an investment by investor of a Party in the territory of the other Party, in existence as of the date of entry into force of this Agreement or made or acquired thereafter, that has been made in accordance with the other Party's applicable law and regulations.

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<sup>1</sup> For greater certainty, the domestic laws and regulations of the Member States of the Union include the Union's laws and regulations.