BỘ NGOẠI GIAO

BỘ NGOẠI GIAO	**CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM** **Độc lập - Tự do - Hạnh phúc**
Số: 49/2012/TB-LPQT	*Hà Nội, ngày 26 tháng 11 năm 2012*

THÔNG BÁO
Về việc điều ước quốc tế có hiệu lực

Thực hiện quy định tại khoản 3 Điều 47 của Luật Ký kết, gia nhập và thực hiện điều ước quốc tế năm 2005, Bộ Ngoại giao trân trọng thông báo:

Hiệp định giữa Chính phủ nước Cộng hòa xã hội chủ nghĩa Việt Nam và Chính phủ Vương quốc Đan Mạch về hợp tác phát triển về chuyển hóa carbon thấp trong lĩnh vực tiết kiệm năng lượng tại Việt Nam 2013 - 2015, ký tại Hà Nội ngày 08 tháng 11 năm 2012, có hiệu lực kể từ ngày 08 tháng 11 năm 2012.

Bộ Ngoại giao trân trọng gửi Bản sao Hiệp định nêu trên theo quy định tại Điều 68 của Luật nên trên.

TL. BỘ TRƯỞNG
VỤ TRƯỞNG
VỤ LUẬT PHÁP VÀ ĐIỀU ƯỚC QUỐC TẾ

Nguyễn Thị Thanh Hà

AGREEMENT
BETWEEN
THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM
AND
THE GOVERNMENT OF THE KINGDOM OF DENMARK
REGARDING
DEVELOPMENT COOPERATION
ON
LOW CARBON TRANSITION IN ENERGY EFFICIENCY IN VIET NAM
2013 - 2015

WHEREAS the Government of the Socialist Republic of Viet Nam, represented by the Ministry of Industry and Trade (hereinafter referred to as 'GoV') has requested the support of the Government of Denmark (hereafter referred to as "GoDK") to contribute towards the funding of the Low Carbon Transition in Energy Efficiency (hereinafter referred to as the 'Project');

WHEREAS GoDK has agreed to support the implementation of the project as defined in the Project Support Document with up to an amount of DKK 65 million on a grant basis (hereafter referred to as "the Grant"), as a financial and technical assistance to the Ministry of Industry and Trade (MOIT) and the Ministry of Construction (MOC) (hereafter referred to as the Implementing Partners), who will implement the project;

WHEREAS the general provision of this agreement is set forth in the agreement between the GoV and the GoDK named General Terms and Procedures of Development Cooperation dated 25 August 1993;

WHEREAS the GoV and GoDK have agreed that the Danish Ministry of Foreign Affairs will sign separate subsidiary administrative agreements with each of the implementing partners under this agreement. The administrative agreements will define common procedures for consultation and decision-making, disbursement mechanisms, financial management, monitoring, reporting and audit, review, evaluation, and exchange of

information and cooperation between the individual implementing partner and the Danish Ministry of Foreign Affairs;

WHEREAS commitment to international law and conflict prevention, respect for transparent and good governance processes, accountability and the fight against corruption, sound macro-economic policies and the commitment to poverty reduction govern the policies of GoV and GoDK, and which are prerequisites for this agreement, and hence constitutes essential elements of this agreement;

WHEREAS the GoV and GoDK shall abide by the local laws and by applicable international instruments, including the UN Convention on the Rights of the Child and International Labour Organization Convention which Viet Nam and Denmark are party to;

WHEREAS GoV and GoDK is committed to the principles of harmonisation and to strive for the highest degree of alignment with the budgetary and accountability system of the implementing partners and the legislation of the GoV so as to enhance effective implementation, to reduce the administrative burden, to minimise transaction costs and increase transparency and accountability of the support provided;

NOW THEREFORE GoV and GoDK have decided as follows:

Article 1

Definitions

For the purpose of this Agreement, unless otherwise stated, the terms listed below mean the following:

a) "Parties" in the case of the Government of Viet Nam/GoV refers to MOIT, and in the case of the Government of Denmark/GoDK refers to the Ministry of Foreign Affairs, the Ministry of Climate, Energy and Buildings, the Embassy of Denmark (EDK) in Viet Nam or for both Parties any other authority empowered to perform the functions exercised by said authorities.

b) "Joint decision making arrangement" refers to the overall management of the project, which is the meetings and exchange of letters between the Parties as described in Article 3.

c) "The Documentation" refers to the Project Support Document which, by signature, has been approved by the Danish Ministry of Climate, Energy and Buildings (MCEB), EDK and MOIT and is attached as Annex 1 to this Agreement, hence constituting an integral part hereof. The Documentation will be reviewed in connection with joint reviews. Changes to the Documentation are subject to the approval by the joint decision making arrangement. Development objectives described in the Documentation and the total amount of the Danish contribution cannot be changed.

d) "National Programme" refers to the Viet Nam Energy Efficiency and Conservation Programme 2011-2015.

e) "Project period" means the 3-year period of project implementation, i.e 1 January 2013 to 31 December 2015.

Article 2

Objectives of the project

1. The development objective of the Danish project support is "Improved energy efficiency in small and medium enterprises and buildings in Viet Nam contributes to sustainable development and a transition to a low carbon economy", as stated in the Documentation.

2. The immediate objectives of the Danish project support are:

- For component 1) Energy efficiency in SMEs – "Small and medium enterprises in at least 3 sectors adopt energy efficiency measures that will contribute to the VNEEP energy saving targets of between 5-10%." This objective will be achieved through support to project #2.3 under the VNEEP 2011-2015, complemented by the initiation of lasting partnerships between Vietnamese and Danish industries;

- For component 2) Energy efficiency in buildings - "Improved capacity for implementing Energy efficiency in large buildings

improves and contributes to the VNEEP energy saving targets of between 5-8%." This objective will be achieved through support to project #3.1/3.2 under the VNEEP 2011-15, complemented by the initiation of a partnership between MOC (Viet Nam) and MCEB (Denmark).

as stated in the Documentation.

3. GoDK will base the actual financial support on progress attained compared to planned progress described in the Documentation. Progress will be measured through the implementing partners monitoring framework.

4. The immediate objectives can only be adjusted to changes in the project support context by decision of the joint decision making arrangement described, followed by mutual written agreement between the Parties. Such written agreement shall become addendum to this agreement.

Article 3

Management and Execution

The overall management responsibilities of the project support rests in the Project Steering Committee, which is co-chaired by the Vice Minister of MOIT and the Danish Ambassador to Viet Nam. Members of the Project Steering Committee are representatives from MCEB, MOC, and the head of the Energy Efficiency and Conservation Office (EECO) under MOIT. The work of the Project Steering Committee is limited to project level issues and will be guided by Terms of Reference for Project Steering Committee.

Component 1 – Energy Efficiency in SMEs

Implementing Partner	MOIT
Joint decision making arrangement (3)	Project Steering Committee meetings, exchange of letters and emails
Modality	Targeted Programme Budget Support to the Viet Nam Energy Efficiency and Conservation

	Programme

Component 2 – Energy Efficiency in buildings

Implementing Partner	MOC and MOIT
Joint decision making arrangement	Project Steering Committee meetings, exchange of letters and emails
Modality	Targeted Programme Budget Support to the Viet Nam Energy Efficiency and Conservation Programme

Article 4

Obligations of GoV

Under this Agreement, the GoV shall:

a) Promptly inform GoDK of any condition which interfere or threaten to interfere with the successful implementation of the project support including conditions which may interfere with the successful implementation of the National Programme;

b) Within a reasonable time advice on all reports, recommendations and other matters properly referred for advice by GoDK, in order not to delay or disrupt the execution of the services or the works of the project;

c) Ensure that all relevant provisions in the General Terms and Procedures of Development Cooperation dated 25 August 1993 regarding the GoDK execution of activities are honoured;

d) Investigate matters, if misuse of funds, fraud or corruption within the project is discovered. The appropriate authorities i.e. the Criminal Investigation Department or Inspectorate of the GoV are expected to participate in this endeavour. Where project funds have been lost in such a manner as described above, the Parties will cooperate in order

to have the implementing partner repay such funds to the project, in order to ensure that planned activities will not be disrupted;

e) Agree that a prerequisite for GoDK's support to the project is that the GoV's contribution to the National Programme 2011-2015 should at least match the contribution of the GoDK;

f) Allocate sufficient funds from the GoV's budget to the National Programme. GoV budgets comprise both capital and recurrent expenditures. The other funding sources for the National Programme are international support and contributions by the enterprises. There will be a balanced focus between supporting physical implementation and capacity building and between support directed at the provincial and national levels;

g) Ensure that the account for the project is kept in accordance with Viet Nam's accounting system, the State Budget Law (2002) and the relevant Vietnamese government regulation and guidelines;

h) Maintain a financial management system according to the current state budget management system to properly reflect the fund allocation, transactions, resources, expenditures and assets of the project and ensure that the implementing agencies are able to produce timely, relevant and reliable financial information for planning, implementing and monitoring the progress of the project against its objectives;

i) Provide the adequate financial and human resources i.e skilled staff and salary in the Government implementing agencies throughout the project period;

j) Provide adequate financial capital and general operational costs. Ensure funds for the payment of all other expenses required for the establishment and operation of the project, which are not mentioned as items to be provided by the GoDK;

k) Affirm that the resources provided by GoDK for the project will only be used to cover expenditures included in the state budget as approved by the National Assembly of Viet Nam and only for the

project, and not any other National Programme or other government programmes;

l) Ensure the tax exemption of expatriate personnel and their family members follows the Regulation on expatriate personnel for ODA programmes and projects in Viet Nam which is Decision No. 119/2009/QD-Ttg dated 1/10/2009 of the Prime Minister of Viet Nam and other documents on amendment, addition, or replacement of this Decision;

m) Facilitate the issue of multiple entry and exit visas, work permits and residence permits for the advisors and their families regardless of nationality as well as provide assistance in the clearance through customs of their personal belongings that they are allowed to import according to the Regulation mentioned under item (l) above;

n) Equipment, vehicle, materials, supplies and spare parts to be purchased for the project by the GoDK, if any, will be exempted from any duties, VAT, taxes, and public fees and charges other than user's fee and charges, etc. in accordance with Vietnamese regulations. The refunded VAT and other charges from these equipment and materials will be transferred to the project funds for the following fiscal year;

o) Ensure timely settlement of any other related formalities that might keep the project behind schedule;

p) Maintain all project accounting materials within 5 years after the project's end for possible use of the National Audit Office of Denmark.

Article 5

Obligations of GoDK

Under this Agreement, the GoDK shall:

a) GoDK will provide the following financial means for the implementation of the project:

Name of Component	Implementing Partner	Budget (million DKK)
Component 1 – Energy Efficiency in SME	MOIT	13,2
Component 2 – Energy Efficiency in buildings	MOC	2,4
TA or other works contracted by Denmark including car purchase for the EECO office	EDK	11,9
Project management (energy adviser, mid-term review, technical missions, audits etc.)	EDK	2,5
Unallocated for investment support (financial mechanism allocated during inception phase)		35,0
Total		65,0

b) All commitments of GoDK are made in Danish Kroner;

c) GoDK will strive to ensure the predictability of the Grant by informing the GoV not later than the end of the third quarter of the calendar year, prior to the finalisation of next year's national budget about the support anticipated for the coming year under this Agreement;

d) GoDK will cooperate and communicate fully and in a timely manner with the GoV on all matters relevant to the implementation of the project as defined in the Project Document and this Agreement;

e) GoDK will inform any changes regarding the years of commitments or the schedule of disbursements for discussion between the two Parties before such adjustments are made;

f) GoDK will not bear any responsibility and/or liability to any third party with regard to implementation of the project.

Article 6

Obligations of both Parties

Both Parties will:

a) Strengthen aid effectiveness by endeavour to co-ordinate their efforts under this agreement with other development partners, be they states, international organisations or non-governmental organisations;

b) Use best endeavours to optimise the use of project resources.

Article 7

Information, monitoring and evaluation

1. The Parties shall collaborate fully to ensure that the purposes of this Agreement be accomplished. To this end, the Parties shall exchange views with regard to matters relating to the project and provide each other with all available data, documentation and information; shall provide appropriate mutual assistance required in the discharging of the Parties' duties; and provide all necessary support to facilitate the due implementation of the project.

2. One mid-term review after approximately one and a half years shall be jointly conducted by GoDK. The review will focus on achievements and necessary further steps to guarantee a successful completion of the project.

3. Technical supervision mission shall be jointly conducted 2 times per year as part of the partnership to be established between MCEB and MOIT/MOC.

4. GoDK shall have the right to carry out any technical or financial mission that is considered necessary to monitor the implementation of the project. To facilitate the work of the person or persons instructed to carry out such monitoring missions, the GoV shall provide these persons with all relevant support if deemed necessary.

5. Evaluation of the project support, preferably undertaken jointly by GoDK and the GoV may be carried out at the request of either Party.

6. After the termination of the project support GoDK reserves the right to carry out evaluation in accordance with this article.

Article 8

Financial Management

1. Financial management is the responsibility of the GoV. The financial management will include budget management, fund management, reporting, procurement and audit.

2. Interest accrued from the remittances shall be returned by the implementing partner to GoDK on an annual basis with exception of interest accrued from accounts at State Treasury and other bank that investment support fund deposited.

3. Unspent balance or savings of project funds will be automatically transferred to the funding of the next fiscal year and this amount will be deducted from the commitment fund to be provided of that year. At the end of the Agreement, unless there is another agreement between the GoV and the GoDK, those funds must be returned to EDK.

4. The accounting and financial management guidelines for the VNEEP will be the foundation for all financial management matters in this project.

Article 9

Planning, Accounting and Reporting

1. The Danish support will be processed and accounted for through standard GoV budget planning and financial management system.

2. By no later than 31 August each year, MOIT will provide to EDK an annual budget and implementation plan with estimated budget for the National Programme for the next succeeding fiscal year. This budget plan should comprise the sources and use of funds for the National Programme including budget allocation for implementing agencies and expected budget from GoDK to the project for the said year.

3. The following set of documents will be produced by MOIT and will form the basis of annual disbursement to the SBV's account by the EDK. These documents should be sent to the EDK before 31 August each year, starting from 2014.

a) A report on the budget allocated to the project for the preceding fiscal year.

b) A financial statement certified by SBV on the use and balance in the account reserved for project budget expenditure for the preceding fiscal year, including the date and name/number of the government's bank account into which the local currency amounts have been deposited.

c) A financial progress reports including the preceding fiscal year and cumulated for the current fiscal year for the project, showing the actual and planed use of fund and implementation.

d) Audit report by SAV as in accordance with the provisions of Article 11 below.

4. The report on project activities will be prepared by MOIT in accordance with the GoV's reporting procedure and provided to EDK/MCEB in a timely fashion.

Article 10

Procurement

1. The GoV will undertake all procurement in relation to implementation of the project except procurement of technical assistance. All procurement of works, goods, services, and training will be performed in accordance with generally accepted procurement principles and good

practices and be consistent with Viet Nam's Public Procurement Law (November 2005) and regulations specific to the energy sector.

2. Procurement of vehicle and technical assistance is the responsibility of the EDK. The EDK will be responsible for contracting consultants and will consult with the relevant Ministries on the process and quality of recruitment.

Article 11

Auditing

1. The project is subject to annual audit by the State Audit of Viet Nam (SAV). MOIT will work with SAV to get an agreement that financial audits are carried out every year.

2. The audit of the project will be carried out in accordance with international auditing standards in accordance with the terms of reference that will be agreed between the MOIT and EDK/MCEB at the later stage. In principle, the audits will cover:

i. The Treasury accounting system and adherence to regulations and procedures that cover both GoV and Danish transferred funds;

ii. Propriety with regards to procurement, contracting and payment (i.e. procurement audit).

3. The MOIT and EDK/MCEB will review the recommendations of SAV and agree on an action plan for corrective actions on reported deficiencies and/or misspending (if occurs).

4. At the termination of the project, a final audit will take place within twelfth months of closure, or as agreed according to a plan to be outlined in cooperation between GoV and GoDK.

5. Representatives of the Auditor General of Denmark shall have the right to:

i. Carry out any audit or inspection considering necessary as regards the use of the Danish funds in question, on the basis of all relevant documentation;

ii. Inspect accounts and records of suppliers and contractors relating to the performance of the contract, and to perform a complete audit.

If the Auditor General of Denmark is satisfied with annual audit reports to be made by either SAV or an independent external auditor, the audit or inspection as mentioned in point(i) and (ii) shall not be required.

6. In case it is EDK/MCEB's opinion that there is a need for conducting any special audit review (value for money or performance audit) as part of the supervision, this will timely consulted with the Vietnamese implementing agencies on the scope and contents of such an audit. The Vietnamese Party will offer all reasonable support to facilitate such a special audit review. The cost of such an audit review will be covered by the EDK through the project management budget.

Article 12

Transfer of ownership

1. The implementing partners responsible for the implementation of project components shall maintain updated inventories of all equipment financed by earmarked support from GoDK, e.g. vehicles, computers, furniture and tools.

2. Equipment, material, supplies and facilities purchased by Denmark, which are used during the implementation of the project, e.g. vehicles, computers, furniture and tools, remain the property of the project, until such time as the Parties may agree otherwise.

3. Transfer of ownership of the above-mentioned assets to the implementing partners may take place during the project period. Before project termination, the Parties will assess and agree on final transfer of such assets, which can be justified on the basis of a final request from the implementing partners.

Article 13

Non-compliance, Suspension and Force majeure

1. In case of non-compliance with the provisions of this Agreement and /or violation of the essential elements mentioned in this Agreement, the GoDK reserves the right to suspend with immediate effect further disbursements to the implementing partners under this Agreement. Non-compliance includes inter alia:

- Failure by the Vietnamese Parties to implement the project in accordance with the conditions of this Agreement;
- Failure by Vietnamese Party, through the key ministries including MOIT, MOC, MOF in using the grants provided by the GoDK for the implementation of the project;
- Substantial deviation from the annual budget plan for the project provided by the Danish funds for other purposes, or
- Failure to comply with financial management obligation as described in article 8 of this Agreement.

2. If Danish funds administered by the GoV are found to have been disbursed to activities that are outside the scope of the objectives and provisions in:

- the Government Agreement;
- the Project Document;
- the work plan and budgets approved by the Project Steering Committee;
- the Cost Norms or Salary Scale agreed by the Competent Authorities;

such funds will be reimbursed by the GoV to the GoDK.

3. In case of force majeure e.g. severe natural disasters including earth quake, tsunami, storms or floods that create suspension or delay in the project implementation and affect the project effectiveness, the affected Party should promptly inform the other in writing. If substantial delay is caused by such

situation, an extension of the project implementation duration might be discussed and decided by the Project Steering Committee.

Article 14

Corruption

1. No offer, payment, consideration or benefit of any kind, which could be regarded as an illegal or corrupt practice, shall be made, promised, sought or accepted - neither directly nor indirectly - as an inducement or reward in relation to activities funded under this agreement, incl. tendering, award, or execution of contracts. Any such practise will be grounds for the immediate cancellation of this agreement or parts of it, and for such additional action, civil and/or criminal, as may be appropriate. At the discretion of the GoDK, a further consequence of any such practise can be the definite exclusion from any projects funded by the GoDK.

2. GoV commits that all persons involved in project activities are under strict obligation to report to the EDK any suspicion on or actual cases of:

- Fraud;
- Misuse of funds;
- Corruption;
- Breach of contracts;
- Court cases involving a larger amount of money;
- Loss of funds;
- Possible loss of funds;
- Qualifications or criticism in audit reports and other instances or misuse of funds not mentioned here.

Article 15

Child Labour

The Vietnamese Party will abide by the local laws and by applicable international instruments, including the UN convention on the Rights of the Child and the International Labour Conventions to which Viet Nam is a member, – in particular the Minimum Age Convention, 1973 (No. 138) taking effect for Viet Nam from 24 June 2003 and the Worst Forms of Child Labour Convention, 1999 (No. 182) taking effect for Viet Nam from 19 December 2000. The Vietnamese Party will ensure that no-one under 14 years of age or age of the end of compulsory schooling is engaged by organisations working for the project.

Article 16

Settlement of disputes

If any dispute arises between the Parties as to the interpretation, application or implementation of this agreement, they will consult each other in order to reach an amicable solution.

Article 17

Amendment

Any amendment to this Agreement shall be agreed, in writing, between the Parties and shall constitute an integral part of this Agreement.

Article 18

Entry into force, duration and termination

1. This Agreement shall enter into effect on the date of signature and shall remain in force until the final audit of the project is approved.

2. The cooperation between the Parties under this Agreement will have the duration of three (03) years. The duration of the cooperation may be extended by mutual agreement and within the agreed budget.

3. Notwithstanding the previous clause each Party may terminate the Agreement upon six (06) months written notice.

In witness hereof the Parties hereto, acting through their representatives duly authorised for this purpose, have caused this Agreement to be signed in two (02) originals in the English language in Hanoi, Viet Nam on this day of .08..November 2012.

FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM

Vu Huy Hoang

Minister

Ministry of Industry and Trade

FOR THE GOVERNMENT OF THE KINGDOM OF DENMARK

Martin Lidegaard

Minister

Ministry of Climate, Energy and Building