

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF THAILAND AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Kingdom of Thailand and the Government of the Kingdom of Sweden, hereinafter referred to as "Contracting Parties",

DESIRING to intensify economic cooperation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

RECOGNIZING that the promotion and protection of such investments favour the expansion of the economic relations between the two Contracting Parties and stimulate investment initiatives,

HAVE agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investments" shall mean every kind of asset, invested by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the other Contracting Party, and shall include in particular, though not exclusively:

(a) Movable and immovable property as well as any other property rights, such as mortgage, lien, pledge, usufruct and similar rights;

(b) Shares and other kinds of interest in the property of companies;

(c) Title to money or any performance having financial value;

(d) Patents, other industrial property rights, trade names, and other intellectual property rights as well as goodwill as may be recognized by the laws of the Contracting Party in which the investment is made;

(e) Business concessions conferred by law or by virtue of any licenses and permits granted pursuant to law, or contracts, including concessions to search for, cultivate, extract or exploit natural resources;

(f) Goods that under a leasing agreement are placed at the disposal of a lessee in the territory of one Contracting Party by a lessor being a national of the other Contracting Party or a legal person having its seat in the territory of that Contracting Party.

Any alteration of the form in which assets are invested shall not affect their character as an investment.

2. The term "investor" shall mean with regard to either Contracting Party:

(a) Natural persons who, according to the law of that Contracting Party are considered to be its nationals;

(b) Juridical persons which are constituted or otherwise organised under the law of that Contracting Party;

(c) Juridical persons not established under the law of that Contracting Party

(i) In which more than 50 per cent of the equity interest is beneficially owned by natural or juridical persons of that Contracting Party; or

(ii) In relation to which natural or juridical persons of that Contracting Party have the power to name a majority of their directors or otherwise legally direct their actions.

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

4. The term "territory" shall mean the territory of each Contracting Party as well as the exclusive economic zone, the seabed and subsoil, over which the Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction.

5. The term "freely usable currencies" shall mean currencies that the International Monetary Fund determines, from time to time, as freely usable currencies in accordance with the Articles of the Agreement of the International Monetary Fund and amendments thereafter.

Article 2. Scope of Application of this Agreement

1. This Agreement shall apply to investments of the investor of one Contracting Party which have been admitted in the territory of the other Contracting Party in accordance with the laws or regulations of the Contracting Party in whose territory the investments are made.

2. Without prejudice to paragraph 1, each Contracting Party may make the right of an investor of the other Contracting Party to raise a claim concerning his investment under this Agreement dependent on the condition that the investment concerned has been approved in writing by its competent authorities. This provision shall also apply to an alteration of the form of the investment.

3. Requests for any such approval shall be examined in good faith and be given sympathetic consideration in harmony with the general aim of this Agreement and in compliance with its provisions, in particular those on the definitions of investments and investors and on national and most favoured nation treatment.

4. Applications for such approvals may be submitted in respect of investments irrespective of whether they are made before or after entry into force of this Agreement.

5. Such approvals by a Contracting Party shall remain in force as long as the investment concerned continues to be an investment of an investor of the other Contracting Party.

6. This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled before its entry into force.

Article 3. Treatment of Investments

1. Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its legislation.

2. Investments made by investors of one Contracting Party in the territory of the other Contracting Party, and also the returns therefrom, shall receive treatment which is fair and equitable and no less favourable than that accorded in respect of the investments of the investors of the latter Contracting Party or of any third State.

3. Each Contracting Party shall apply to investors of the other Contracting Party as regards the management, use, enjoyment or disposal of their investments, a treatment which is no less favourable than that accorded to its own investors or to investors of any third State.

4. Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

5. 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 investors of the other Contracting Party.

Article 4. Exceptions

1. The provisions of Article 3 relative to the grant of treatment no less favourable than that accorded to the investors of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

- (a) The formation or extension of a customs union, a common market, a free trade area or a similar regional association for economic cooperation; or
- (b) Special rights and benefits granted to a particular "investor" under the laws of promotion of investments of either Contracting Party; or
- (c) Any international agreement or arrangement, or any domestic legislation, relating wholly or mainly to taxation.

Article 5. Expropriation and Compensation

1. Neither Contracting Party shall subject the investments of an investor of the other Contracting Party to any measure of expropriation or nationalisation or any other measure having equivalent effect unless the following conditions are complied with:

- (a) The measures are taken in the public interest and under due process of law;
- (b) The measures are not discriminatory; and
- (c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation, which shall be transferable without delay in freely usable currencies.

2. The provisions of Paragraph 1 of this Article shall also apply to the returns from an investment.

3. Where a Contracting Party expropriates assets of a company which is incorporated or constituted under the law in force in any part of its territory, and in which an investor 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 investor of the other Contracting Party who is the owner of those shares.

4. Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to investors of the latter Contracting Party or of any third State.

Article 6. Transfers

1. Each Contracting Party shall allow without delay the free transfer of investments and returns in freely usable currencies, in particular, though not exclusively of:

- (a) The capital and returns;
- (b) The proceeds from a total or partial liquidation of any investment by an investor of the other Contracting Party;
- (c) Funds in repayment of loans which both Contracting Parties have recognized as investment;
- (d) The earnings of individuals, not being its nationals, who are allowed to work in connection with an investment in its territory; and
- (e) Payment of compensation under Article 5.

2. Any transfer referred to in this Agreement shall be effected at the market rate of exchange prevailing on the day the transfer is made.

Article 7. Subrogation

If a Contracting Party or its designated agency makes a payment to any of its investors under a guarantee it has granted in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 8, recognize the transfer of any right or title of such an investor to the former Contracting Party or its designated agency and the subrogation of the former Contracting Party or its designated agency to any such right or title.

Article 8. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if

possible, be settled by negotiation between the Governments of the two Contracting Parties.

2. If the dispute cannot thus be settled within six months, following the date on which such negotiations were requested by either Contracting Party, it shall at the request of either Contracting Party be submitted to an arbitration tribunal.

3. The arbitration tribunal shall be set up from case to case, each Contracting Party appointing one member. These two members shall then agree upon a national of a third State as their chairman, to be appointed by the Government of the two Contracting Parties. The members shall be appointed within two months, and the chairman within four months, from the date either Contracting Party has advised the other Contracting Party of its wish to submit the dispute to an arbitration tribunal.

4. If the time limits referred to in Paragraph 3 of this Article have not been complied with, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments.

5. If the President of the International Court of Justice is prevented from discharging the function provided for in Paragraph 4 of this Article or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party, the most senior member of the Court who is not incapacitated or a national of either Contracting Party shall be invited to make the necessary appointments.

6. The arbitration tribunal shall reach its decision by a majority of votes, the decision being final and binding on the Contracting Parties. Each Contracting Party shall bear the cost of the member appointed by that Contracting Party as well as the costs for its representation in the arbitration proceedings; the cost of the chairman as well as any other costs shall be borne in equal parts by the two Contracting Parties. The arbitration tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting Parties. In all other respects, the procedure of the arbitration tribunal shall be determined by the tribunal itself.

Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute concerning an investment between an investor of one Contracting Party and the other Contracting Party shall be settled amicably through consultation and negotiation.

2. If any such dispute cannot be settled within six months following the date on which the dispute has been raised through written notification, the dispute may, at the selection of the investor concerned, be submitted to arbitration:

(a) To the International Center for Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of the other States, opened for signature at Washington 18 March, 1965 (ICSID Convention), provided that both the disputing Contracting Party and the Contracting Party of the investor are parties to the ICSID Convention; or

(b) Under the Additional Facility Rules of ICSID, provided that one of the Contracting Parties is a party to the ICSID Convention; or

(c) To an international arbitrator or ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The appointing authority under the UNCITRAL Rules shall be the Secretary-General of ICSID.

3. Any arbitration under paragraph 2 shall be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

4. In case the investor selects to submit the dispute to arbitration under the ICSID as stated in paragraph 2 (a), each Contracting Party shall consent to such submission in accordance with the provisions of the said Convention.

5. Each Contracting Party hereby consents to the submission of any investment dispute for settlement by arbitration in accordance with the choice of the investor under paragraph 2 (b) and (c).

6. The consent given by each Contracting Party in paragraph 5 and the submission of the dispute by an investor under the said paragraphs shall satisfy the requirements of:

(a) The Additional Facility Rules of ICSID for written consent of the parties to a dispute; and

(b) Article I of the UNCITRAL Arbitration Rules for an agreement in writing on referral to arbitration by the parties to a

contract; and

(c) Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958, for "an agreement in writing".

7. Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such award.

8. In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defense, counterclaim, right of set-off or for any other reason, that the indemnification or other compensation for all or part of the alleged damage has been received or will be received pursuant to an insurance or guarantee contract, but the Contracting Party may require evidence that the compensating party agrees to that the investor exercises the right to claim compensation.

Article 10. Preservation of Rights

This Agreement shall in no way restrict the rights and benefits conferred to an investor of one Contracting Party by the provisions of national law of the other Contracting Party or on the basis of commitments made in international agreements which both Contracting Parties have entered into.

Article 11. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the day the Governments of the two Contracting Parties notify each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled.

2. This Agreement shall remain in force for a period of twenty years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting Party in writing notifies the other Contracting Party of its decision to terminate this Agreement.

3. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 10 shall remain in force for a further period of twenty years from that date.

IN WITNESS WHEREOF, the undersigned, duly authorized to this effect, have signed this Agreement.

DONE at Bangkok on 18 February, 2000 in duplicate in the English language.

For the Government of the Kingdom of Sweden

Leif Pagrotsky

For the Government of the Kingdom of Thailand

Surin Pitsuwan