

Treaty between the Kingdom of Thailand and the Federal Republic of Germany concerning the Encouragement and Reciprocal Protection of Investments

The Kingdom of Thailand and the Federal Republic of Germany (hereinafter referred to as the "Contracting Parties"),

Desiring to intensify economic co-operation between both States,

Intending to create favourable conditions for investments by investors of either State in the territory of the other State,

Recognizing that the encouragement and protection of such investments are conducive to stimulate private business initiative and to increase the prosperity of both countries,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Treaty

1. the term "investments" comprises every kind of asset, in particular, though not exclusively:

(a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges;

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

(c) Claims to money which has been used to create an economic value or claims to any performance having an economic value;

(d) Intellectual property rights, in particular copyrights, patents, utility-model patents, industrial designs, trademarks, trade-names, trade and business secrets, technical processes, know-how, and good will;

(e) Business concessions under public law, including concessions to explore, extract and exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their classification as investment, provided such altered investment is approved by the relevant Contracting Party if so required by its laws and regulations.

2. The term "returns" means the amounts yielded by an investment for a definite period, such as profit, dividends, interest, royalties or fees.

3. The term "investors" with regard to either Contracting Party refers to:

(a) Natural persons who

– in respect of the Kingdom of Thailand, are considered to be nationals within the meaning of its applicable laws; and

– in respect of the Federal Republic of Germany are Germans within the meaning of its Basic Law;

(b) Legal entities, including companies, corporations, business associations and other organizations, with or without legal personality, which are constituted or otherwise duly organized under the law of that Contracting Party and have their seat in the territory of that Contracting Party.

4. The term "freely usable currencies" means currencies that the International Monetary Fund determines, from time to time, as freely usable currencies in accordance with the Articles of Agreement of the International Monetary Fund including subsequent Amendments.

5. The term "territory" means in respect of each Contracting Party, the territory under the sovereignty of the Contracting

Party including the territorial sea, the continental shelf and the exclusive economic zone over which a Contracting Party exercises sovereign rights and jurisdiction in accordance with international law.

Article 2. Admission, Protection and Treatment of Investments

(1) Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.

(2) The Treaty shall apply only to investments that have been specifically approved in writing by the competent authority, if so required by the laws and regulations of that Contracting Party.

(3) Each Contracting Party shall in its territory in any case accord such investments by investors of the other Contracting Party and their returns fair and equitable treatment and full protection.

(4) Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

(5) The Contracting Parties shall within the framework of their laws and regulations give sympathetic considerations for the entry and sojourn of persons of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment; the same shall apply to employed persons of either Contracting Party who in connection with an investment wish to enter the territory of the other Contracting Party and sojourn there to take up employment. Applications for work permits shall also be given sympathetic consideration.

(6) The investors of either Contracting Party are free to choose international means of transport for the transport of persons and/or capital-goods directly connected with an investment within the meaning of this Treaty without prejudice to rights and obligations conferred by relevant bilateral or multilateral agreements binding on either Contracting Party.

Article 3. National and Most-favoured-nation Treatment

(1) Neither Contracting Party shall subject investments in its territory owned or controlled by investors of the other Contracting Party to treatment less favourable than it accords to investments of its own investors or to investments of investors of any third State.

(2) Neither Contracting Party shall subject investors of the other Contracting Party, as regards their activities such as the management, maintenance, use, enjoyment and disposal of their investments in its territory, to treatment less favourable than it accords to its own investors or to investors of any third State. The following shall, in particular, be deemed "treatment less favourable" within the meaning of this Article: unequal treatment in the case of restrictions on the purchase of raw or auxiliary materials, of energy or fuel or of means of production or operation of any kind, unequal treatment in the case of impeding the marketing of products inside or outside the country, as well as any other measures having similar effects. Measures that have to be taken for reasons of public security and order, public health or morality shall not be deemed "treatment less favourable" within the meaning of this Article.

(3) Such treatment shall not be applicable to privileges which either Contracting Party accords to investors of third States on account of its membership of, or association with, an economic union, a customs union, a free trade area, an interim agreement leading to the formation of a customs union or of a free trade area, or any other similar economic co-operation arrangements.

(4) The treatment granted under this Article shall not be applicable to advantages which either Contracting Party accords to investors of third States by virtue of a double taxation agreement or other agreements regarding matters of taxation.

(5) The provisions of this Article do not oblige a Contracting Party to extend to investors resident in the territory of the other Contracting Party tax privileges, tax exemptions and tax reductions which according to its tax laws are granted only to investors resident in its territory.

Article 4. Protection and Compensation

(1) Investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

(2) Investments by investors of either Contracting Party shall not be expropriated, nationalized or subjected directly or indirectly to any other measure the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party except for the public benefit and against compensation. Such compensation shall be

equivalent to the value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure has become publicly known. The compensation shall be paid without delay and shall carry interest at the market lending rate from the date the payment is due until the date of actual payment; it shall be effectively realizable and freely transferable. Appropriate provision shall be made at or prior to the time of expropriation, nationalization or comparable measure for the determination and payment of such compensation. The legality of any expropriation, nationalization or comparable measure, as well as the compensation thereof, shall, at the request of the affected investors, be subject to review by due process of law.

(3) Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, or revolt, shall be accorded treatment no less favourable by such other Contracting Party than that which the latter Contracting Party accords to its own investors as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

(4) Investors of either Contracting Party shall enjoy most-favoured-nation treatment in the territory of the other Contracting Party in respect of the matters provided for in this Article.

Article 5. Free Transfer

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments in freely usable currencies in connection with an investment, in particular, though not exclusively,

(a) The principal and additional amounts to maintain or increase the investment;

(b) The returns;

(c) The repayment of loans;

(d) The proceeds from the liquidation or the sale of the whole or any part of the investment;

(e) The compensation provided for in Article 4.

(2) Transfer of payments under Article 4 (2) or (3), Articles 5 and 6 shall be made in freely usable currencies without delay at the market rate of exchange applicable on the day of the transfer. A transfer shall be deemed to have been made "without delay" if effected within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the relevant request has been duly submitted and may on no account exceed two months.

(3) Should there be no foreign exchange market, the cross rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment for conversions of the currencies concerned into Special Drawing Rights shall apply.

Article 6. Subrogation

If either Contracting Party makes a payment to any of its investors under a guarantee against non-commercial risk it has assumed 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 9, recognize the assignment, whether under a law or pursuant to a legal transaction, of any right or claim of such investors to the former Contracting Party. The latter Contracting Party shall also recognize the subrogation of the former Contracting Party to any such right or claim (assigned claims) which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments made by virtue of such assigned claims, Article 4 (2) and (3) as well as Article 5 shall apply *mutatis mutandis*.

Article 7. Application of other Rules

(1) If the laws and regulations of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Party in addition to this Treaty contain provisions, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Treaty, such provisions shall to the extent that it is more favourable prevail over this Treaty.

(2) Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

Article 8. Scope of Application

This Treaty shall also apply to approved investments made prior to its entry into force by investors of either Contracting Party in the territory of the other Contracting Party consistent with the latter's laws and regulations.

Article 9. Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Treaty should as far as possible be settled by the governments of the two Contracting Parties.

(2) If a dispute cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as their chairman to be appointed by the governments of the two Contracting Parties. Such members shall be appointed within two months, and such chairman within three months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.

(4) If such appointments have not been made within the periods specified in paragraph 3 above, either Contracting Party may, in the absence of any other arrangement, 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 should 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 Court next in seniority who is not a national of either Contracting Party should make the necessary appointments.

(5) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding. Each Contracting Party shall bear the cost of its own member and of its representatives in the arbitration proceedings; the cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitral tribunal may make a different regulation concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 10. Settlement of Disputes between a Contracting Party and an Investor

(1) Disputes concerning investments between a Contracting Party and an investor of the other Contracting Party should as far as possible be settled amicably between the parties in dispute.

(2) If the dispute cannot be settled within six months from the date on which it has been raised by one of the parties to the dispute, it shall, at the request of either party to the dispute be submitted for arbitration. Unless the parties to the dispute have agreed otherwise, the provisions of Article 9 (3) to (5) shall be applied mutatis mutandis on condition that the appointment of the members of the arbitral tribunal in accordance with Article 9 (3) is effected by the parties to the dispute and that, insofar as the periods specified in Article 9 (3) are not observed, either party to the dispute may, in the absence of other arrangements, invite the President of the Court of International Arbitration of the International Chamber of Commerce in Paris to make the required appointments. The award shall be enforced in accordance with domestic law.

(3) During arbitration proceedings or the enforcement of an award, the Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage.

(4) In the event of both Contracting Parties having become Contracting States of the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, disputes under this Article between the parties to dispute shall be submitted for arbitration under the aforementioned Convention, unless the parties in dispute agree otherwise; each Contracting Party herewith declares its acceptance of such procedure.

Article 11. Final Provisions

(1) This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged as soon as possible.

(2) This Treaty shall enter into force one month after the date of exchange of the instruments of ratification. Upon the entry into force the Treaty between the Kingdom of Thailand and the Federal Republic of Germany concerning the Promotion and the Reciprocal Protection of Investments signed on 13th December 1961 (equivalent to the year 2504 of the Buddhist calendar) shall be terminated. This Treaty shall remain in force for a period of ten years and shall be extended thereafter for

an unlimited period unless denounced in writing through diplomatic channels by either Contracting Party twelve months before its expiration. After the expiry of the period of ten years this Treaty may be denounced at any time by either Contracting Party in writing through diplomatic channels giving twelve months' prior notice.

(3) In respect of investments made prior to the date of termination of this Treaty, the provisions of the preceding Articles shall continue to be effective for a further period of fifteen years from the date of termination of this Treaty.

(4) This Treaty shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Treaty.

Done at Bangkok on 24th June 2002 in duplicate in the Thai, German and English languages, all texts being authentic. In case of divergence of interpretation, the English text shall prevail.

For the Kingdom of Thailand

S. Sathirathai

For the Federal Republic of Germany

A. v. Stechow