

Agreement between the Government of the Kingdom of Thailand and the Government of the Republic of Slovenia on the Promotion and Protection of Investments

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

Desiring to intensify economic cooperation for 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 investments on the basis of this Agreement will stimulate business initiatives,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "Investment" shall mean every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter including, in particular, though not exclusively:

- a) Movable and immovable property and any property rights such as leases, mortgages, liens and pledges;
- b) Shares, stocks, debentures and any other similar forms of participation in a company;
- c) Claims to money or to any performance under contract having an economic value;
- d) Intellectual and industrial property rights and goodwill; and
- e) Concessions conferred by law, by administrative act or under a contract, by a competent authority, including concessions to search for, develop, extract or exploit natural resources.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investments provided that such alteration is in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made. Treatment may not be less favourable than that accorded to the original investment.

2. The term "Returns" shall mean the amounts yielded by investments and in particular, though not exclusively, shall include profits, dividends, interests, royalties, capital gains or other forms of income related to the investments.

3. The term "Investor" shall mean:

- a) Natural persons having the nationality of either Contracting Party, in accordance with its laws, and
- b) Legal persons constituted under the law of that Contracting Party.

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 International Monetary Fund and Amendments thereafter.

Article 2. Promotion and Protection of Investments

- 1 . Each Contracting Party shall promote within its territory investments made by investors of the other Contracting Party and shall admit such investments into its territory in accordance with its laws and regulations.
- 2 . Each Contracting Party shall accord to investments in its territory of investors of the other Contracting Party fair and equitable treatment and full and constant protection and security.
- 3 . Neither Contracting Party shall impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.
- 4 . Each Contracting Party shall within the framework of its legislation give a sympathetic consideration to applications for necessary permits in connection with the investments in its territory, including authorisations for engaging top managerial and technical personnel of their choice, regardless of their nationality.

Article 3. Treatment of Investments

- 1 . Investments made by investors of one Contracting Party in the territory of the other Contracting Party or returns related thereto, shall be accorded treatment which is not less favourable than that which the latter Contracting Party accords to the investments and returns made by its own investors or by investors of any third State, whichever is the more favourable.
- 2 . Investors of one Contracting Party shall be accorded by the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment which is not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is the more favourable.
- 3 . The provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of:
 - a) Any existing or future free trade area, customs union, common market or other forms of regional cooperation to which either of the Contracting Parties is or may become a Party,
 - b) Any international agreement or any domestic legislation relating wholly or mainly to taxation.

Article 4. Expropriation

- 1 . Investments made by investors of a Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalized or subject to any other measure having effect equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation") except for a public interest, on a non-discriminatory basis, under due process of law and against prompt, adequate and effective compensation.
- 2 . Such compensation shall amount to the market value of the investment expropriated immediately before expropriation or before impending expropriation became public knowledge, whichever is the earlier, and shall be payable from the due date with interest at the applicable rate provided by laws or other relevant regulations of the Contracting Party until the date of payment.
- 3 . The investor whose investments are expropriated shall have the right to the prompt review by a judicial or other competent authority of that Contracting Party of its case and of valuation of its investments in accordance with the principles set out in this Article.

Article 5. Compensation for Losses

Investor of one Contracting Party whose investment have suffered losses owing to war or other armed conflict, revolution, national uprising, state of emergency or any similar event in the territory of the other Contracting Party shall be accorded by this Contracting Party treatment in relation to such losses, including compensation, indemnification or restitution, no less favourable than that which the latter Contracting Party accords to its own investors or investors of any third State, whichever is more favourable to the investor. Any payment made under this Article shall be immediately realisable and freely transferable in freely usable currency.

Article 6. Transfer of Payments

- 1 . Each Contracting Party shall guarantee investors of the other Contracting Party the free transfer of funds related to their

investments and in particular, though not exclusively:

- a) Initial capital and additional contributions for the maintenance or development of the investments;
- b) Returns;
- c) Funds in repayment of loans related to an investment;
- d) Proceeds from the sale or liquidation of all or part of an investment;
- e) Any compensation or other payment referred to in Articles 4 and 5 of this Agreement;
- f) Payments arising out of the settlement of a dispute;
- g) Earnings and other remuneration of nationals of the other Contracting Party who are employed and allowed to work in connection with the investment in its territory.

2. Each Contracting Party shall further guarantee that transfers shall be made in freely usable currencies at the market rate of exchange existing on the date of transfer.

Article 7. Subrogation

If a Contracting Party or its designated agency makes a payment to its investor under an indemnity covering noncommercial risk given 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 to the former Contracting Party or its designated agency of all rights and claims of the investor which that Contracting Party or its designated agency shall be entitled to exercise by virtue of subrogation to the same extent as the Party indemnified.

Article 8. Disputes between an Investor and a Contracting Party

1. Any dispute between an investor of one Contracting Party and the other Contracting Party shall be settled amicably.

2. If such a dispute cannot be settled within a period of three (3) months from the date of request for settlement, the investor concerned may submit the dispute either to:

- a) The competent court of the Contracting Party; or
- b) Conciliation or arbitration through the International Center for the Settlement of Investments Disputes (ICSID), in case both Contracting Parties are Contracting States to the Convention on the Settlement of Investments Disputes between States and Nationals of other States, opened for signature in Washington D.C. on March 18, 1965; or
- c) An ad-hoc tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. The award shall be final and binding on both parties to the dispute and shall be enforced in accordance with the laws of the Contracting Party to the dispute.

Article 9. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled through negotiations.

2. If the dispute cannot thus be settled within six (6) 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 Arbitral Tribunal.

3. Such an Arbitral Tribunal shall be constituted for each individual case in the following way. Within two (2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. Those 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. The Chairman shall be appointed within three (3) months from the date of appointment of the other two members.

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 agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from

discharging the said function, the Vice President shall be invited to make 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 or is otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.

5. The Arbitral Tribunal shall reach its decision by a majority of votes. The decisions of the Tribunal shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member appointed by that Contracting Party and of its representation at the arbitral proceedings. Both Contracting Parties shall assume an equal share of the cost of the Chairman, as well as any other costs. The Tribunal may make a different decision regarding the sharing of the costs. In all other respects, the Arbitral Tribunal shall determine its own rules of procedure.

Article 10. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such provisions shall, to the extent that they are more favourable, prevail over this Agreement.

Article 11. Application of the Agreement

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 12. Entry Into Force, Duration and Termination

1. The Contracting Parties shall notify each other when the constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the thirtieth (30) day after the date of receipt of the last notification.

2. This Agreement shall remain in force initially for a period of ten (10) years and shall be considered as renewed on the same terms for a period of ten (10) years and so forth, unless at least twelve (12) months before its expiration either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

3. In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 11 shall remain in force for a further period of ten (10) years from the date of termination of this Agreement.

IN WITNESS WHEREOF, the undersigned representatives duly authorize thereto, have signed the present Agreement

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

For the Government of the Republic of Slovenia

Dr. Marjan Senjur (s)

For the Government of the Kingdom of Thailand

Dr. Surin Pitsuwan (s)

Protocol