

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF THAILAND AND THE GOVERNMENT OF THE REPUBLIC OF POLAND FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

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

Desiring to intensify economic cooperation to the mutual benefit of both countries,

Intending to create favourable conditions for investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party, and

Recognizing that the encouragement and protection of investments on the basis of this Agreement stimulates business initiative in this field,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "investments" means any kind of assets as recognized by the law and regulations of the respective Contracting Parties, invested by nationals or companies of one Contracting Party, provided that they have been made in accordance with the law and regulations of the other Contracting Party, and shall include in particular, though not exclusively:

(a) Movable and immovable property and any other property rights such as mortgages, liens or pledges,

(b) Shares, stocks, bonds, debentures of companies wherever incorporated or interests in the property of such company,

(c) Claims to money or to any performance under contract having financial value,

(d) Intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, trade secrets, technical processes, know-how and goodwill,

(e) Business concessions of financial value necessary for conducting economic activities, conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

2. Any change in the form of an investment, shall not affect its character as an investment provided that such change has also been approved under Article 2;

3. The term „national" means any natural person who possesses the nationality of either Contracting Party in accordance with the law in force in the territory of that Contracting Party;

4. The term "company" means any juridical person incorporated or constituted under the law in force in the territory of either Contracting Party whether or not with limited liability and whether or not for pecuniary profit;

5. The term "territory" means the territory of the Kingdom of Thailand, or the territory of the Republic of Poland, as well as the maritime areas adjacent to the coast of the State concerned, to the extent to which that state may exercise sovereign rights or jurisdiction in those areas according to international law.

6. The term "returns" means the amounts yielded by an investment, and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties or other incomes;

7. The term "expropriation" shall also include acts of sovereign power which are tantamount to expropriation, as well as measures of nationalization.

Article 2. Promotion and Protection of Investments

1. The benefits of this Agreement shall apply only in cases where the investment of capital by the nationals and companies of one Contracting Party in the territory of the other Contracting Party has been specifically approved in writing by the competent authority of the latter Contracting Party.
2. Nationals and companies of either Contracting Party shall be free to apply for such approval in respect of any investment of capital whether made before or after the entry into force of this Agreement.
3. When granting approval in respect of any investment the approving Contracting Party shall be free to lay down appropriate conditions.
4. Each Contracting Party shall, having regard to its plans and policies, encourage and facilitate the investments of capital in its territory by the nationals and companies of the other Contracting Party.
5. Investments of nationals or companies of one Contracting Party in the territory of the other Contracting Party shall enjoy the most constant protection and security under the law of the latter Contracting Party.

Article 3. National Treatment and Most-favoured-nation Treatment

1. Investments of nationals or companies of one Contracting Party in the territory of the other Contracting Party, as also the returns therefrom, shall receive treatment which is fair and equitable and not less favourable than that accorded in respect of the investments and returns of the nationals and companies of the latter Contracting Party or of any third State.
2. Each Contracting Party shall in its territory accord to nationals or companies of the other Contracting Party as regards the management, use, enjoyment or disposal of their investments treatment which is fair and equitable and not less favourable than that which it accords to its own nationals and companies or to the nationals and companies of any third State.
3. The provisions on national treatment under this Agreement shall be granted only on a reciprocal basis.

Article 4. Exceptions

The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals or companies of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other Contracting Party the benefit of any treatment, preference or privileges which may be extended by the former Contracting Party by virtue of:

- (a) Any existing or future customs union or a free trade area or a common external tariff area or a monetary union or similar international agreement including the organization for mutual economic assistance or other forms of regional cooperation to which either of the Contracting Parties is or may become a Party; or
- (b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation; or
- (c) Any arrangement with a third country or countries in the same geographical region designed to promote regional cooperation in the economic, social, labour, industrial or monetary fields within the framework of specific projects; or
- (d) The grant to a particular person or company of the status of a "promoted person" under the law of Thailand on the promotion of investment.

Article 5. Compensation for Losses

Nationals and companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war, armed conflicts, a state of national emergency in the territory of the latter Contracting Party shall be accorded, as regards restitution, indemnification, compensation or other settlement, treatment not less favourable than that which the latter Contracting Party grants to its own nationals and companies or to the nationals and companies of any third State.

Article 6. Expropriation

1. In any case where investments of a national or company of one Contracting Party are subject, directly or indirectly, to any

measure of expropriation, the national or company concerned shall be accorded in the territory of the other Contracting Party fair and equitable treatment in relation to any such measure. No such measure shall be taken except for public purposes and against payment of compensation. Such compensation shall be adequate, taking into account, inter alia, the market value on the day the measure was taken, effectively realizable, made without undue delay and freely transferable, in freely convertible currencies.

2. The legality of any expropriation and the amount and method of payment of compensation shall be subject to review by due process of law.

Article 7. Transfer

Each Contracting Party shall guarantee to any national or company of the other Contracting Party the free transfer and without undue delay of, in particular:

- (a) The capital and the returns accruing from any investment;
- (b) The proceeds of the total or partial liquidation of any investment;
- (c) Funds in repayment of loans related to an investment;
- (d) The corresponding part of wages and other remuneration accruing to a national of that other Contracting Party who was permitted to work in connection with an investment in the territory of the former Contracting Party; and
- (e) Any compensation owed to a national or company by virtue of Article 5 or 6 of this Agreement;

In any freely convertible currencies agreed upon between the national or company and the Contracting Party concerned at the exchange rate on the day of transfer.

Article 8. Subrogation

1. If a Contracting Party or any agency thereof makes a payment to any of its nationals or companies under a guarantee or insurance against non-commercial risks it has contracted in respect of an investment, the other Contracting Party shall recognize the validity of the subrogation in favour of the former Contracting Party or agency thereof to any right or title held by the national or company. The Contracting Party or any agency thereof which is subrogated in the rights of the national or company shall be entitled to the same rights as those of the national or company and to the extent that they exercise such rights they shall do so subject to the obligations of the national or company pertaining to such insured investment.

2. If the former Contracting Party or any agency thereof acquires amounts in the lawful currency of the other Contracting Party or credits thereof by virtue of an assignment under paragraph 1 of this Article, such amounts and credits shall be freely available to the former Contracting Party for the purpose of meeting its expenditure in the territory of the latter Contracting Party.

Article 9. Settlement of Disputes between the Contracting Party and the National or Company of the other Contracting Party

In case both Contracting Parties are Contracting States to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington D.C. on March 18, 1965, and failing to settle the disputes amicably or by any other form of settlement of disputes, each Contracting Party shall consent to submit any legal dispute that may arise out of investments made by a national or company of the other Contracting Party to conciliation or arbitration at the request of such national or company in accordance with the provisions of the said Convention.

Article 10. Consultations and Exchange of Information

Upon request by either Contracting Party, the other Contracting Party shall agree promptly to consultations on the interpretation or application of this Agreement.

Article 11. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultation or negotiation.

2. If a dispute between the Contracting Parties can not thus be settled within six months, 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 as follows:

(a) Each Contracting Party shall appoint one member, and these 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;

(b) The said members shall be appointed within three months, and the Chairman within four months, from the date on which either Contracting Party shall have informed the other Contracting Party that it proposes to submit the dispute to an arbitral tribunal.

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 relevant agreement, 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 shall be invited to 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 International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

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(a) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties.

(b) Subject to the power of the arbitral tribunal to give a different ruling concerning costs, the cost of its own member and of its representation in the arbitral proceedings shall be borne by each Contracting Party and the cost of the Chairman and the remaining costs shall be borne in equal parts by the two Contracting Parties.

(c) In all respects other than those specified in subparagraphs (a) and (b) of this paragraph, the arbitral tribunal shall determine its own procedure.

Article 12. Other International Agreements

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 nationals or companies of the other Contracting Party.

Article 13. Entry Into Force, Duration and Termination

1. The provisions of this agreement shall apply to the rights and obligations of both Contracting Parties with respect to investments made before or after the date of entry into force of this agreement.

2. This Agreement shall enter into force on the latter date on which either Contracting Party notifies the other Contracting Party in writing that its internal legal requirements for the entry into force of this Agreement have been fulfilled, and shall remain in force for an initial period of ten years. It shall thereafter continue in force indefinitely until either Contracting Party terminates it by twelve months' prior written notice to the other Contracting Party through diplomatic channel. However, with respect to an investment of capital approved while the Agreement is in force, its provisions shall continue to have effect for a period of ten years from the date of such a termination.

In witness whereof, the Undersigned, duly authorized by the respective Governments, have signed this Agreement,

Done in duplicate, at Bangkok, on this 18th day of December A.D. 1992 in the British language.

For the Government of the Kingdom of Thailand

H.E.Sqn.Ldr.Prasoon Soonsiri

Minister of Foreign Affairs

For the Government of the Republic of Poland

H.E. Mr. Ryszard Michalski

Acting under Secretary of State, the Ministry of Finance