

Agreement Between the Government of the Kingdom of Thailand, and the Government of the State of Israel for the Reciprocal Promotion and Protection of Investments

The Government of the Kingdom of Thailand and the Government of the State of Israel (hereinafter: the "Contracting Parties"),

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

INTENDING to create favorable conditions for greater investments by investors of either Contracting Party in the territory of the other Contracting Party, and,

RECOGNIZING that the reciprocal promotion and protection of investments on the basis of the present Agreement will be conducive to the stimulation of individual business initiative and will increase prosperity in both states,

Have agreed as follows:

Article 1. Definitions

For the purposes of the present Agreement:

1. The term "investments" shall comprise any kind of assets, implemented in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, including, but not limited to:

- (a) Movable and immovable property and any other property rights such as mortgages, liens or pledges,
- (b) Shares, stock and debentures of companies or other interests in such companies,
- (c) Claims to money or to any performance under contract having financial value, or goodwill,
- (d) Intellectual property rights, technical processes and know-how,
- (e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

2. A change in the form in which assets are invested or reinvested, in accordance with the laws, regulations and others relevant requirements of the Contracting Party in whose territory the investment is made, does not affect their character as investments within the meaning of this Agreement.

3. The term "investor" shall comprise:

- (a) Natural persons who are nationals or permanent residents of the Contracting Party concerned who are not also nationals of the other Contracting Party; or
- (b) Companies including corporations, firms or associations incorporated or constituted in accordance with the law of the Contracting Party concerned.

4. The term "returns" shall comprise the amounts yielded by an investment including, but not limited to: dividends, profits, sums received from the total or partial liquidation of an investment, interest, capital gains, royalties or fees.

5. The term "territory" shall mean with respect to each Contracting Party, the territory of that Contracting Party including the territorial sea, as well as the continental shelf and the exclusive economic zone over which that Contracting Party exercises sovereign rights or jurisdiction in conformity with international law.

6. The term "freely usable currencies" shall mean a currency 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 and Amendments thereto.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall, in its territory, encourage and create favorable conditions for investments by investors of the other Contracting Party and, subject to its right to exercise the powers conferred by its law, shall admit such investments.

2. Investments made by investors of each Contracting Party shall 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.

Article 3. Most Favored Nation and National Treatment

1. Neither Contracting Party shall, in its territory, subject investments or returns of investors of the other Contracting Party to treatment less favorable than that which it accords to investments or returns of its own investors or to investments or to investments or returns of investors of any third State.

2. Neither Contracting Party shall, in its territory, subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favorable than that which it accords to its own investors or to investors of any third State.

Article 4. Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot or other such similar activity in the territory of the latter Contracting party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favorable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable in a freely usable currency.

2. Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party, resulting from:

(a) Requisitioning of their property by its forces or authorities, or

(b) Destruction of their property by its forces or authorities, which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded restitution or prompt, adequate and effective compensation. Resulting payments shall be freely transferable in a freely usable currency.

Article 5. Expropriation

Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter: "expropriation") in the territory of the other Contracting Party, except for a public purpose related to the internal needs of that Contracting Party on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at the applicable rate provided by law by that Contracting Party until the date of payment, shall be made without delay, be effectively realizable and be freely transferable. The investors affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment, in accordance with the principles set out in this paragraph.

Article 6. Repatriation of Investments and Returns

Each Contracting Party shall, in respect of investments, guarantee to investor of the other Contracting Party all the rights and benefits regarding the unrestricted transfer of their investments and returns in accordance with the following terms:

1. Transfers shall be effected without delay in the freely usable currency in which the capital was originally invested or in any other freely usable currency as determined by the investor; provided that the investor has complied with all his fiscal obligations and that the repatriation is in accordance with the exchange regulations established by the Contracting Party in whose territory the investment was made. Such transfers may include funds from:

- (a) Capital and additional capital amounts used to maintain and increase investments;
- (b) Net operating profits including dividends and interest in proportion to the shareholdings of the investor;
- (c) Repayments of any loan, including interest thereon, relating to the investment;
- (d) Payment of royalties and service fees relating to the investment;
- (e) Proceeds from the sales of the investors' shares in the investment;
- (f) Proceeds received by investors in case of sale, partial sale or liquidation of the investment;
- (g) The earnings of nationals of one Contracting Party who work in connection with an investment in the territory of the other Contracting Party, subject to the laws and regulations of that Contracting Party.

2. In the event the exchange regulations of one Contracting Party are modified, that Contracting Party guarantees that such modifications shall not adversely affect the rights to repatriate investments and returns, as were in force at the time the investment was made.

3. Unless otherwise agreed by the investor, transfer shall be made at the rate of exchange applicable on the date of transfer.

Article 7. Exceptions

The provisions of this Agreement relating to the grant of treatment not 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 the investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of:

- (a) Any existing or future agreement establishing, strengthening or expanding a free trade area, common external tariff area, monetary or regional association for economic cooperation;
- (b) Any agreement with a third country or countries in the same geographic region designed to promote regional cooperation in the economic, social, industrial or monetary fields within the framework of specific projects; or
- (c) Any international agreement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.
- (d) The definition of "investment" (Article 1, paragraph 1) and the reference to "reinvestment" (Article 1, paragraph 2) and the provisions of Article 6 contained in agreements entered into by the State of Israel prior to January 1, 1992 with Poland, Romania, and Hungary.

Article 8. Settlement of Investment Dispute between a Contracting Party and an Investor

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment made in the territory of the latter shall be subject to negotiations between the parties to the dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party cannot be thus settled within a period of six months, the investor shall be entitled to submit the dispute to any of the following bodies at the option of the investor concerned:

- (a) A court of competent jurisdiction of the Contracting Party in whose territory the investment was made; or
- (b) The International Center for the Settlement of Investment Dispute (ICSID) having regard to the applicable provisions of the Convention on the Settlement of Investment Dispute between States and Nationals of other States, opened for signature at Washington D.C. on March 18, 1965; or
- (c) An arbitrator or international ad hoc arbitral tribunal as agreed by the parties to the dispute. The Arbitral tribunal shall be established according to the principles contained in Article 9.

3. All arbitral awards shall be final and binding on the parties to the dispute and shall be enforced in accordance with the

laws of the Contracting party to the dispute.

4. All sums received or payable as a result of a settlement shall be freely transferable in a freely usable currency.

Article 9. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel, which may include, if both Contracting Parties so desire, referral to a Bilateral Commission composed of representatives of both Contracting Parties.

2. If a dispute between the Contracting Parties cannot thus be settled within six (6) months from notification of the dispute, it shall, upon 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 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 two 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 Secretary General of the Permanent Court of Arbitration at the Hague (hereinafter: the "PCA") to make any necessary appointments. If the Secretary General of the PCA is a national of either Contracting Party or is otherwise prevented from discharging the said function, then the Deputy Secretary General of the PCA who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Parties shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal shall determine its own procedure.

Article 10. Subrogation

1. If one Contracting Party or its designated Agency (hereinafter: the "First Contracting Party") makes a payment under an indemnity covering non-commercial risks, given in respect of an investment in the territory of the other Contracting Party (hereinafter: the "Second Contracting Party"), the Second Contracting Party shall recognize:

(a) The assignment to the First Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified; and

(b) That the First Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified, and shall assume the obligations related to the investment.

2. The First Contracting Party shall be entitled in all circumstances to:

(a) The same treatment in respect of the rights, claims and obligations acquired by it, by virtue of the assignment; and

(b) Any payments received in pursuance of those rights and claims, as the party indemnified was entitled to receive by virtue of this Agreement, in respect of the investment concerned and its related returns.

Article 11. 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 the present Agreement contain rules, whether general or specific, entitling investments by investors of one Contracting Party to a treatment more favorable than is provided for by the present Agreement, such rules shall to the extent that they are more favorable prevail over the present Agreement.

Article 12. Scope of the Agreement

The benefit of this Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party, which have been admitted in accordance with the laws and regulations, and specifically approved in writing if so required by the competent authorities concerned of the other Contracting Party, whether made before or after the entry into force of this Agreement.

Article 13. Entry Into Force

Each Contracting Party shall notify the other Contracting Party in writing through the diplomatic channel of the completion of its internal legal procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter notification.

Article 14. Duration and Termination

This Agreement shall remain in force for a period of ten (10) years. Thereafter it shall continue in force until the expiration of twelve (12) months from the date on which either Contracting Party shall have given written notice of termination to the other. In respect of investments made while this Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of ten (10) years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in Bangkok this 18th day of February 2000, which corresponds to the day of 5760, 18th day of February B.E. 2543, in duplicate in the Thai, Hebrew, and English languages, all three texts being equally authentic.

In case of differences in interpretation the English text shall prevail.

For the Government of the Kingdom of Thailand

For the Government of the State of Israel

On signing the Agreement between the Government of the State of Israel and the Government of the Kingdom of Thailand for the Reciprocal Promotion and Protection of Investments, the following understandings on the provisions of Article 7, paragraphs (b) and (d) were also reached and are recorded as follows:

Article 7 paragraph (b)

For Thailand the term "..... a third country or countries in the same geographic region.....", as referred to in this paragraph, means a country or countries in the South East Asia region.

Article 7 paragraph (d)

In the latter part of 1991 the State of Israel entered into Agreement for the Reciprocal Promotion and Protection of Investments with Poland, Hungary and Romania.

Since 1991, a process of liberalisation has modified the regulations to the point where the language of those three agreements no longer reflect the current right of repatriation provided in the regulations.

That being the case and in order to avoid the need to constantly revisit and modify these agreements, the State of Israel has undertaken negotiations to modify those three agreements by replacing the language of Article 6 therein with the current Article 6.

The Government of the State of Israel shall notify the Government of the Kingdom of Thailand when the said agreements will be (modified) amended so as to render Article 7 (d) unnecessary. Upon such notification, Article 7 (d) shall become null and void.

This Annex shall form an integral part of the Agreement between the Kingdom of Thailand and the State of Israel for the Reciprocal Promotion and Protection of Investments.