

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

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

Desiring to expand and deepen economic cooperation between the two States on a long term basis and in particular to create favourable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party on the basis of mutual benefit,

Recognizing the need to protect investments by investors of both Contracting Parties and to stimulate the flow of investments and individual business initiative with a view to promoting economic prosperity of both Contracting Parties,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

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

(a) Movable and immovable property and any other property rights;

(b) Shares, stocks and debentures and any other forms of participation in companies;

(c) Claims to money or to any performance under any contracts having an economic value;

(d) Intellectual property rights, including in particular copyrights, patents, industrial design, trademarks and trade names, technical processes, know-how and goodwill;

(e) Business concessions conferred by law, under a contract, or an administrative act by competent State authorities to search for, cultivate, extract or exploit natural resources.

A subsequent change of the form in which the investments have been made shall not affect their character as investments, provided that such a change does not contradict to the laws and regulations of the Contracting Party in whose territory the investments have been made, as well as the relevant provisions of this Agreement. 2. The term "returns" means lawful amounts yielded by investments in particular, though not exclusively, includes profits, dividends, interest, royalties or other fees.

3. The term "investor" shall mean:

(a) With respect to Bulgaria: - A natural person who is a national of the Republic of Bulgaria in accordance with its applicable law,

- Any company, firm, partnership, organization or association with or without juridical personality, incorporated or constituted in accordance with the laws of the Republic of Bulgaria, with a seat in its territory;

(b) With respect to Thailand: - Any natural person possessing the nationality of or permanently residing in the Kingdom of Thailand in accordance with its laws; or

- Any corporation, partnership, trust, organisation, association or enterprise incorporated or duly constituted in accordance

with applicable laws of the Kingdom of Thailand.

4. The term "territory" shall mean the territory under the sovereignty of the Republic of Bulgaria, on the one hand, and of the Kingdom of Thailand, on the other hand, including territorial sea, as well as the continental shelf and the exclusive economic zone over which the respective State exercises sovereign rights or jurisdiction in conformity with international law.

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

Article 2. Promotion and Protection of Investment

1. Each Contracting Party shall promote and protect in its territory investments of investors of the other Contracting Party and admit such investments in accordance with its laws and regulations and accord them fair and equitable treatment and protection.

2. In case of reinvestment of returns from an investment, these reinvestments and their returns shall enjoy the same protection as the initial investments.

3. Each Contracting Party shall consider favourably, and in compliance with its laws and regulations, questions concerning entry, stay, work and movement in its territory of nationals of the other Contracting Party who carry out activities connected with the investments as defined in the present Agreement and of their families forming part of their household.

Article 3. Treatment of Investments

1. Investments of investors of one Contracting Party in the territory of the other Contracting Party and the returns therefrom shall be accorded treatment no less favourable than that accorded to investments and returns of the investors of the latter Contracting Party or of any third State.

2. The provisions of paragraph 1 of this Article shall not apply to any advantage accorded to investors of a third State by the other Contracting Party by virtue of:

(a) Existing or future customs union, free trade areas, economic communities, or similar international agreements leading to such unions and other forms of economic cooperation;

(b) Agreements relating to taxation or any domestic legislation relating to taxation.

3. Each Contracting Party reserves the right to make or maintain, in compliance with its legislation in force, exceptions from national treatment granted according to paragraph 1 of this Article. However, any new exceptions shall only apply to investments made after the entry into force of such exceptions.

4. Should national legislation of the Contracting Parties or present or future international agreements applicable between the Contracting Parties contain regulations, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such regulation shall to the extent that is more favourable prevail over the present Agreement.

Article 4. Compensation for Losses

Investors of a Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war, other armed conflict, state of national emergency or other similar events shall be accorded treatment, in respect to restitution, indemnification, compensation, or other settlement, no less favourable than that accorded to its own investors or to investors of any third State.

Article 5. Expropriation

1. Investments of investors of either Contracting Party shall not be expropriated, nationalised or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party unless by due process of law, for public purpose, on a non-discriminatory basis and against prompt and adequate compensation.

2. The compensation shall amount to the market value of the investments expropriated immediately before the date of expropriation or before the impending expropriation becomes public knowledge, whichever the earlier, and shall be paid

without delay and shall carry interest at the rate applicable in the territory of that Contracting Party until the date of payment. The payment of such compensation shall be freely transferable in a freely usable currency.

3. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to 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 paragraphs 1 and 2. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.

Article 6. Free Transfer

1. Each Contracting Party shall accord to the investors of the other Contracting Party, after the fulfillment of the fiscal obligations of the investors, the free transfer, in freely usable currency, of:

(a) Capital and additional amounts intended to maintain or increase the investment;

(b) Returns from the investment;

(c) Proceeds obtained from the sale and the total or partial liquidation of the investment;

(d) Funds in repayment of loans relating to investments;

(e) Compensation payable in accordance with Articles 4 and 5;

(f) The remuneration received by the nationals of the other Contracting Party for work or services done in connection with investments made in its territory, in accordance with its laws and regulations.

2. The transfers referred to in the preceding paragraph shall be made without delay, at the market exchange rate prevailing on the date of the transfer in the territory of the other Contracting Party where the investment was made.

3. All transfers under this Article shall receive treatment no less favourable than that accorded to the transfers of an investment made by an investor of any third State.

Article 7. Subrogation

A Contracting Party having, by virtue of a guarantee covering noncommercial risk given for an investment made in the territory of the other Contracting Party, made payment to one of its own investors is, by virtue of subrogation, entitled to exercise the rights and actions as well as to assume the obligations of the said investor. The subrogation in the rights and obligations of the insured investor extends also to the right of transfer mentioned in Article 6. The paying Contracting Party cannot obtain rights or assume obligations greater than those of the insured investor.

Article 8. Settlement of Disputes between Contracting Parties

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

2. If a dispute between the Contracting Parties cannot thus be settled within six months after the beginning of negotiations, 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 three months from 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 President of the International Court of Justice to make any 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 also 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.

5. The arbitral tribunal shall reach its decision on the basis of the provisions of the present Agreement concluded between the Contracting Parties as well as the generally accepted principles and rules of international law. The arbitral tribunal shall

reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. The tribunal determines its own procedure.

6. Each Contracting Party 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.

Article 9. Settlement of Investment Disputes

1. In case of dispute with respect to investments between an investor of one Contracting Party and the other Contracting Party, consultation shall take place between the parties concerned with a view to solving the case amicably.

2. If these consultations do not result in a solution within three months from the date of request for settlement, the investor may submit the dispute in respect to Articles 4, 5, 6 and 7, at his choice, for settlement to:

(a) The competent courts of the Contracting Party in the territory of which the investment has been made; or

(b) The International Centre for Settlement of Investment Disputes in case both Contracting Parties are Contracting States to the Convention on the Settlement of Investment Disputes between States and Nationals of other state, opened for signature at Washington, D.C. on 18, 1965; or

(c) An international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

Each Contracting Party shall give its consent to the submission of a dispute to international arbitration under subparagraphs b) or c) of this paragraph. 3. The arbitral tribunal established under this Article shall reach its decision on the basis of national laws and regulations of the Contracting Party, which is a party to the dispute, the provisions of the present Agreement, as well as applicable rules of international law.

4. 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.

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

Article 10. Consultation

Each Contracting Party may propose to the other Contracting Party to enter into consultation concerning all questions related to the application or interpretation of the present Agreement. The other Contracting Party shall make the necessary steps for holding these consultations.

Article 11. Applicability

The provisions of this Agreement shall, from the date of entry into force thereof, also apply to investments that have been made in accordance with the respective legislation in force that date.

Article 12. Entry Into Force, Duration and Termination

This Agreement shall enter into force on the thirtieth day after the date of the second of the notes by which the Contracting Parties inform each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled. It shall remain in force for an initial period of ten years. It shall thereafter continue to be in force indefinitely, subject to the right of the Contracting Party to terminate it by twelve months' prior notice in writing to the other Contracting Party. However, with respect to an investment approved while the Agreement is in force, the provisions of Articles 1 to 11 shall be effective for a further period of ten years from the date of termination.

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

Done in Bangkok on the day of the 11th of September, Two thousand and three Year of the Christian Era in two originals in the Thai, Bulgarian and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND : (Surakiart Sathirathai) Minister of Foreign Affairs

FOR THE GOVERNMENT OF THE REPUBLIC OF BULGARIA: (Krassimir Katev) Deputy Minister of Finance

At the signing of the Agreement between the Government of the Republic of Bulgaria and the Government of the Kingdom of Thailand on Promotion and Protection of Investments, the undersigned, duly authorised by their respective Governments, have, in addition, agreed on the following provisions, which shall be regarded as an integral part of the said Agreement:

With regard to Article 2, it is understood that for the time being, foreign investments, admitted in accordance with the laws and regulations of the Contracting Parties in the territory of which the investments have been made have to be, where applicable, specifically approved in writing by the competent authorities in order for the investors to be able to raise a claim under an Investment Protection Agreement.

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

Done in Bangkok on the day of the 11th of September, Two thousand and three Year of the Christian Era in two originals in the Thai, Bulgarian and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND : (Surakiart Sathirathai) Minister of Foreign Affairs

FOR THE GOVERNMENT OF THE REPUBLIC OF BULGARIA: (Krassimir Katev) Deputy Minister of Finance