

# Agreement between the Government of the Kingdom of Thailand and the Government of the Russian Federation on the Promotion and Reciprocal Protection of Investments

The Government of the Kingdom of Thailand and the Government of the Russian Federation, hereinafter referred to as "the Contracting Parties",

Intending to create favourable conditions for making investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and reciprocal protection of investments on the basis of the present Agreement shall stimulate the inflow of capital and the development of mutually beneficial trade and economic co-operation,

Have agreed as follows:

## Article 1. Definitions

For the purposes of the present Agreement:

a) The term "investor" shall mean with regard to either Contracting Party:

(i) Natural persons who, according to the laws of that Contracting Party, are considered to be its nationals;

(ii) Legal persons, including companies, corporations, business associations and other organizations, which are constituted or otherwise duly organized under the law of that Contracting Party and have their seat, together with real economic activities, in the territory of that same Contracting Party;

b) The term "investments" shall mean all kinds of assets invested by investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws of latter Contracting Party and in particular, though not exclusively, includes:

- movable and immovable property and any other property rights;

- shares, stocks and other forms of participation of capital in the legal person;

- claims to money invested for the purpose of creating economic values or under contracts having an economic value, related to investments;

- intellectual property rights such as copyrights, patents, industrial designs, models, trade marks and service marks, technology, information having commercial value and "know-how";

- rights conferred by law or under contract to conduct business activity related in particular, to exploration, development, extraction and exploitation of natural resources.

Any change of the form of investments shall not effect their qualification as investments if such change does not contradict the applicable laws of the Contracting Party in the territory of which the investment were made;

c) The term "returns" shall mean the amounts yielded from investments and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties or fees;

d) The term "territory of the Contracting Party" shall mean the territory of the Kingdom of Thailand or the territory of the Russian Federation (as well as their respective exclusive economic zone and continental shelf defined in accordance with the United Nations Convention on the Law of the Sea 1982);

e) The term "laws of the Contracting Party" shall mean the laws and regulations of the Kingdom of Thailand or the laws and

regulations of the Russian Federation;

f) 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 Agreement of the International Monetary Fund and Amendments thereafter.

## **Article 2. Admission and Protection of Investments and Application of Agreement**

1. Each Contracting Party shall aspire to create favourable conditions to investors of the other Contracting Party to make investments in its territory and admits such investments in accordance with its laws.
2. Each Contracting Party shall in its territory in any case accord such investments by investors of the other Contracting Party fair and equitable treatment and full protection.
3. The Agreement shall apply only to investments that have been specifically approved in writing by the competent authority if so required by the laws of the Contracting Party.
4. This Agreement shall apply to investments made before or after to its entry into force by investors of either Contracting Party in the territory of the other Contracting Party in accordance with the laws of the latter Contracting Party. However, this Agreement shall not apply to disputes which arise before its entry into force.

## **Article 3. Treatment of Investments**

1. Each Contracting Party shall accord in its territory to investments made in accordance with its laws by investors of the other Contracting Party treatment not less favourable than that it accords to investments of its own investors or to investments of investors of any third State, whichever is more favourable.
2. Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investments, treatment not less favourable than that which it accords to its own investors or investors of any third State, whichever is more favourable.
3. Each Contracting Party shall reserve the right to accord and to introduce exceptions from a national treatment and most favoured nation treatment as defined in paragraphs 1 and 2 of this article to investors of the other Contracting Party and their investments, including re-investments for the purpose of national security or public order.
4. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:
  - a) Any customs union or free trade area or a monetary union or similar international agreements leading to such unions or other forms of regional cooperation to which either of the Contracting Party is or may become a party;
  - b) Any international agreement or arrangement relating wholly or mainly to taxation;
  - c) By virtue of the agreements between the Russian Federation and the States, which had earlier formed part of the Union of the Soviet Socialist Republics.
5. Nothing in this Agreement shall oblige the Contracting Parties to grant to investor and investment of each other the treatment under this Article which is more favourable, than the treatment that they will grant to each other pursuant to the obligations under the Agreement Establishing the World Trade Organisation (WTO) of April 15, 1994, including obligations under General Agreement on Trade in Services (GATS) and also under any other multilateral arrangement concerning the treatment of investments which both Contracting Parties are parties to.
6. The Contracting Parties shall within the framework of their laws and regulations give sympathetic considerations for the entry and sojourn of natural person of the other 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.

## **Article 4. Expropriation**

1. Investments of investors of one Contracting Party made in the territory of the other Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter

referred to as expropriation) except when such measures are taken for public interests in accordance with the procedure established by the laws of the Contracting Party, on a non-discriminatory basis and entail prompt, adequate and effective 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 is the earlier. The compensation shall be paid in national currency of the Contracting Party, if the investments were made in national currency. The sum of compensation in national currency shall be freely converted in any freely usable currency at the investor's choice and shall be freely transferred abroad from the territory of the Contracting Party.

The compensation shall be paid in foreign currency if the investments were made in foreign currency.

The compensation shall be paid without delay. In case of delay the interest shall be paid from the date the payment was due until the date of actual payment at the following rate:

a) In Thailand

(i) In case of immovable property, from the date compensation is determined by the committee established under Article 23 of the Immovable Property Expropriation Act at the highest rate of interest for the fixed deposit of the Government Savings Bank;

(ii) In the case of movable property, as determined by the Civil and Commercial Code;

b) In Russia

(i) The Russian interbank rate for three month deposit in foreign currency, if the investments were made in foreign currency;

(ii) The rate of interests for Russian State short-term notes, issued in Russian currency, if the investments were made in national 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 5. Compensation for Losses**

Investors of one Contracting Party whose investments suffer losses in the territory of the other Contracting Party as a result of war, civil disturbance or other similar events shall be accorded by the latter Contracting Party a treatment, as regards restitution, indemnification, compensation or other settlement, that the latter Contracting Party accords to investors of a third State or its own investors as regards compensation for such losses, whichever is more favourable.

## **Article 6. Transfers**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, upon fulfillment by them of all fiscal obligation, a free transfer to its territory and abroad of payments related to their investments, and in particular;

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 of this agreement;

f) The remuneration received by the nationals of the other Contracting Party who have the right to work in connection with investments made in its territory, in accordance with its laws;

g) All sums received or payable as a result of a dispute settlement in accordance with Article 9 of this Agreement.

2. The payments, specified in paragraph 1 of this Article, shall be allowed to freely convert into any freely usable currency at the investor's choice at the market exchange rate, applicable at the date of conversion. Transfers of such payments in freely usable currency shall be allowed without delay.

3. The conversion and transfer mentioned in paragraph 2 of this Article shall be made in accordance with the procedural and prudential requirements provided by the laws of the Contracting Party in whose territory the investments were made.

## **Article 7. Subrogation**

A Contracting Party or its designated agency having made payment to an investor based on a guarantee of protection from non-commercial risks in relation to an investment in the territory of the other Contracting Party, shall be entitled by virtue of subrogation, to exercise the rights of the investors to the same extent as the said investor. Such rights shall be exercised in accordance with the laws of the latter Contracting Party.

## **Article 8. Application of other Rules**

1. If the provisions of the 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 and returns of investors of the other Contracting Party to treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

2. Each Contracting Party shall observe any other obligation it may have entered into with regard to investments of investors of the other Contracting Party.

## **Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Any dispute concerning an investment between the investor of one of the Contracting Party and the other Contracting Party shall be settled if possible amicably through negotiation and consultations.

2. If the dispute cannot be settled by means of negotiation and consultations within a period of six months starting from the date of the request by any parties to the dispute it will be submitted at the choice of an investor for settlement to:

- a) A competent court or arbitration court of the Contracting Party in the territory of which the investments were made; or
- b) An ad hoc arbitration in accordance with the Arbitration Rules of the United Nations Commission on

3. An Arbitration award shall be final and binding upon both parties to the dispute. Each Contracting Party undertakes to enforce this award in accordance with its laws.

## **Article 10. Settlement of Disputes between the Contracting Parties**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, whenever possible, be settled amicably through consultations.

2. If a dispute cannot be settled through consultations, it shall, at the request of either Contracting Party, be submitted to an arbitral tribunal for decision.

3. An arbitral tribunal shall be constituted for each dispute. Within two months after receipt through diplomatic channels of the request for arbitration, each Contracting Party shall appoint one member to the arbitral tribunal. The two members shall then select a national of a third State who, upon approval by the two Contracting Parties, shall be appointed Chairman of the arbitral tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members of the 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 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 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 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 determine its own procedure. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Unless otherwise agreed, the decision of the arbitral tribunal

shall be rendered within six months of the appointment of the Chairman in accordance with paragraphs (3) or (4) of this Article.

6. Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitral proceeding; the costs related to the Chairman and any remaining costs shall be borne equally by the Contracting Parties. The arbitral tribunal may however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties.

## **Article 11. Final Provisions**

1. Each Contracting Party shall notify the other Contracting Party in writing of the completion of internal procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications.

2. This Agreement shall remain in force for a period of fifteen years. Upon expiration of this period it shall automatically extend for subsequent period of five years unless one of the Contracting Party notifies the other Contracting Party in writing at least twelve months in advance of its intention to terminate this Agreement.

3. This Agreement may be amended in writing by mutual consent of the Contracting Parties. Any amendment shall enter into force after each Contracting Party has notified the other Contracting Party in writing that it has completed all internal requirements for the entry into force of such amendment.

4. With respect to investments made while this Agreement remains in force the provisions of all other Articles of this Agreement shall continue in effect for a period of fifteen years after the date of its termination.

DONE at Moscow, on October 2002 in duplicate in the Thai, Russian and English languages, all texts being equally authentic. In case of any divergence of interpretation of this Agreement the English text shall apply.

For the Government of the Kingdom of Thailand (Surakiart Sathirathai) Minister of Foreign Affairs (Vladimir Karastin)