

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF CAMBODIA AND THE GOVERNMENT OF THE FRENCH REPUBLIC ON THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The Government of the Kingdom of Cambodia and the Government of the French Republic, hereinafter referred to as "the Contracting Parties",

Desiring to strengthen economic cooperation between the two States and to create favorable conditions for French investment in Cambodia and Cambodian investment in France,

Convinced that the encouragement and protection of such investments are likely to stimulate the transfer of capital and technology between the two countries, in the interest of their economic development,

Have agreed on the following provisions:

Article 1.

For the purposes of this Agreement:

1. The term "investment" means all assets, such as property, rights and interests of every kind, and in particular but not exclusively

(a) movable and immovable property, as well as all other real rights such as mortgages, liens, usufructs, bonds and all similar rights;

(b) shares, share premiums and other forms of participation, whether minority or indirect, in companies incorporated in the territory of one of the Contracting Parties;

(c) bonds, debts and rights to any benefits having economic value;

(d) intellectual, commercial and industrial property rights such as copyrights, patents, licenses, trademarks, industrial models and designs, technical processes, know-how, registered names and clientele

(e) concessions granted by law or under contract, including concessions for the exploration, cultivation, extraction or exploitation of natural resources, including those located in the maritime zone of the Contracting Parties.

It is understood that such assets must be or have been invested in accordance with the legislation of the Contracting Party in whose territory or maritime zone the investment is made, whether before or after the entry into force of this Agreement.

Any change in the form of investment of the assets shall not affect their qualification as investments, provided that such change is not contrary to the legislation of the Contracting Party in whose territory or maritime area the investment is made.

2. The term "nationals" means natural persons possessing the nationality of one of the Contracting Parties.

3. The term "companies" means any legal entity formed in the territory of one of the Contracting Parties in accordance with the legislation of that Party and having its registered office there, or controlled directly or indirectly by nationals of one of the Contracting Parties, or by legal entities having their registered office in the territory of one of the Contracting Parties and formed in accordance with the legislation of that Party.

4. The term "income" means all sums produced by an investment, such as profits, royalties or interest, during a given period.

The income from the investment and, in the case of reinvestment, the income from the reinvestment shall have the same

protection as the investment.

5. This Agreement shall apply to the territory of each of the Contracting Parties and to the maritime area of each of the Contracting Parties, hereinafter referred to as the economic area and the continental shelf, which extend beyond the limits of the territorial waters of each of the Contracting Parties and over which they have, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploring, exploiting and conserving natural resources.

Article 2.

Each Contracting Party shall admit and encourage, within the framework of its legislation and the provisions of this Agreement, investments made by the nationals and companies of the other Party in its territory and in its maritime zone.

Article 3.

Each Contracting Party undertakes to ensure, in its territory and in its maritime zone, fair and equitable treatment, in accordance with the principles of international law, to investments of the nationals and companies of the other Party and to ensure that the exercise of the right thus recognized to fair and equitable treatment shall not be hindered either in law or in fact. In particular, although not exclusively, any restriction on the purchase and transportation of raw and auxiliary materials, energy and fuel, and means of production and operation of any kind, any impediment to the sale and transportation of products within the country and abroad, and any other measures having a similar effect, shall be considered as impediments in law or in fact to fair and equitable treatment.

The Contracting Parties shall give sympathetic consideration, within the framework of their domestic legislation, to applications for entry and authorization to reside, work and travel submitted by nationals of a Contracting Party in connection with an investment made in the territory or maritime area of the other Contracting Party.

Article 4.

Each Contracting Party shall apply to the nationals or companies of the other Party, in its territory and maritime zone, in respect of their investments and activities related to such investments, treatment no less favourable than that accorded to its own nationals or companies, or the treatment accorded to the nationals or companies of the most favoured Nation, whichever is more favourable. In this connection, nationals authorized to work in the territory and maritime zone of one of the Contracting Parties shall be accorded appropriate material facilities for the exercise of their professional activities.

This treatment shall not, however, extend to privileges which a Contracting Party grants to the nationals or companies of a third State by virtue of its participation in or association with a free trade area, a customs union, a common market or any other form of regional economic organization.

The provisions of this Article shall not apply to fiscal matters.

Article 5.

1. Investments made by nationals or companies of either Contracting Party shall enjoy full protection and security in the territory and maritime zone of the other Contracting Party.

2. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measures the effect of which is to dispossess, directly or indirectly, the nationals and companies of the other Party of investments belonging to them in their territory and maritime zone, except in the public interest and provided that such measures are neither discriminatory nor contrary to any particular undertaking.

Any measures of dispossession which may be taken shall give rise to the payment of prompt and adequate compensation, the amount of which, equal to the real value of the investments concerned, shall be assessed in relation to a normal economic situation prior to any threat of dispossession.

This indemnity, its amount and the terms of payment shall be fixed at the latest on the date of the dispossession. This indemnity is effectively realizable, paid without delay and freely transferable. Until the date of payment, it shall bear interest at the appropriate market rate.

3. The nationals or companies of one of the contracting parties whose investments have suffered losses due to war or any other armed conflict, revolution, state of national emergency or revolt occurring in the territory or maritime area of the other contracting party, shall be accorded by that party treatment no less favourable than that accorded to its own nationals

or companies or to those of the most favoured nation.

Article 6.

Each contracting Party shall, in the territory or within the territory of which investments have been made by nationals or companies of the other contracting Party, accord to such nationals or companies the free transfer of

- (a) interest, dividends, profits and other current income ;
- (b) royalties derived from intangible rights designated in paragraph 1(d) and (e) of Article 1;
- (c) payments made for the repayment of regularly contracted loans;
- (d) proceeds from the sale or liquidation of the investment, in whole or in part, including capital gains on the investment
- (e) the compensation for loss or loss of possession provided for in Article 5, paragraphs 2 and 3 above

Nationals of each Contracting Party who have been authorized to work in the territory or maritime zone of the other Contracting Party under an agreed investment shall also be authorized to transfer to their country of origin an appropriate portion of their remuneration.

The transfers referred to in the preceding paragraphs shall be made without delay at the normal rate of exchange officially applicable on the date of transfer.

Article 7.

Any dispute relating to investments between one of the Contracting Parties and a national or a company of the other Contracting Party shall be settled amicably between the two parties concerned.

If such a dispute has not been settled within six months from the time it was raised by either party to the dispute, it shall be submitted at the request of either party to the dispute to arbitration by the International Centre for Settlement of Investment Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed in Washington on March 18, 1965.

Article 8.

1. To the extent that the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad, such guarantee may be granted, on a case-by-case basis, to investments made by nationals or companies of that Party in the territory or maritime zone of the other Party.
2. Investments of nationals and companies of one of the Contracting Parties in the territory or maritime area of the other Party may not obtain the guarantee referred to in the preceding paragraph unless they have first obtained the approval of the latter Party.
3. If one of the Contracting Parties, by virtue of a guarantee given for an investment made in the territory or maritime zone of the other Party, makes payments to one of its nationals or to one of its companies, it shall thereby be subrogated to the rights and actions of such national or company.
4. The said payments shall not affect the rights of the beneficiary of the guarantee to have recourse to ICSID or to pursue the actions brought before it until the procedure has been completed.

Article 9.

Investments which have been the subject of a special undertaking by one of the contracting Parties in respect of the nationals and companies of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, by the terms of such undertaking insofar as the latter contains more favourable provisions than those provided for in this Agreement.

Article 10.

1. Disputes concerning the interpretation or application of this agreement shall be settled, if possible, through diplomatic channels.

2. If the dispute is not settled within six months of the date on which it was raised by either Contracting Party, it shall be submitted, at the request of either Contracting Party, to an arbitration tribunal.

3. The said tribunal shall be constituted for each particular case in the following manner: each Contracting Party shall designate one member, and the two members shall designate, by mutual agreement, a national of a third State who shall be appointed President of the tribunal by both Contracting Parties.

All members shall be appointed within two months from the date on which one Contracting Party has notified the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time limits laid down in paragraph 3 above have not been observed, either Contracting Party shall, in the absence of any other agreement, invite the Secretary-General of the United Nations to make the necessary designations. If the Secretary-General is a national of either Contracting Party or if for any other reason he is prevented from exercising this function, the most senior Deputy Secretary-General who is not a national of one of the Contracting Parties shall make the necessary appointments.

5. The Arbitration Tribunal shall take its decisions by a majority vote. Such decisions shall be final and binding on the Contracting Parties.

The tribunal shall determine its own rules. It shall interpret the award at the request of either Contracting Party. Unless the Tribunal provides otherwise, taking into account particular circumstances, the costs of the arbitration proceedings, including the fees of the arbitrators, shall be shared equally by the Contracting Parties.

Article 11.

Each of the Parties shall notify the other of the completion of the internal procedures required for the entry into force of this agreement, which shall take effect one month after the date of receipt of the last notification.

The Agreement is concluded for an initial period of ten years. It shall remain in force thereafter unless either Party denounces it through diplomatic channels with one year's notice.

Upon the expiration of the period of validity of this Agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for an additional period of fifteen years.

Done at Phnom Penh on July 13, 2000 in two originals, each in the French and Khmer languages, both texts being Khmer language, both texts being equally authentic.

For the Government of the French Republic:

André-Jean Libourel, Ambassador of France

For the Government of the Kingdom of Cambodia:

Keat Chhon, Minister of State