

AGREEMENT AMONG THE GOVERNMENT OF BRUNEI DARUSSALAM, THE REPUBLIC OF INDONESIA, MALAYSIA, THE REPUBLIC OF THE PHILIPPINES, THE REPUBLIC OF SINGAPORE, AND THE KINGDOM OF THAILAND FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

Manila, 15 December 1987

The Governments of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore, and the Kingdom of Thailand, hereinafter referred to as the Contracting Parties;

CONSIDERING that the Heads of Government of ASEAN agreed inter alia on industrial cooperation among the member states of ASEAN in the Declaration of ASEAN Concord signed at Denpasar, Bali on 24 February 1976;

FURTHER CONSIDERING that the Heads of Government of ASEAN in their Meeting in Kuala Lumpur on 4 to 5 August 1977, recognized inter alia that the acceleration of industrialization of the region requires the increased flow of technology and investments, and toward the attainment of this common objective, directed that measures be taken to stimulate the flow of technology, knowhow and private investments among the member states. and directed, in particular, the study of a regional mechanism, and the formulation of guidelines, which would facilitate such desired flow of technology, knowhow and private investments;

DESIRING that appropriate measures be taken to carry out the foregoing intents and to create favourable -conditions for investments by nationals and companies of any ASEAN member state in the territory of the other ASEAN member states and to facilitate the desired flow of private investments therein to increase prosperity in their respective territories;

RECOGNIZING that an agreement on the promotion and protection of such investments will contribute to the furtherance of the above mentioned purposes;

HAVE AGREED AS FOLLONYS:

Article I. Definition

For the purpose of this Agreement:

1. The term "nationals" shall be as defined in the respective Constitutions and laws of each of the Contracting Parties.
2. The term "company" of a Contracting Party shall mean a corporation, partnership or other business association, incorporated or constituted under the laws in force in the territory of any Contracting Party wherein the place of effective management is situated.
3. The term "investment" shall mean every kind of asset and in particular shall include, though not exclusively: a) movable and immovable property and any other proper rights such as mortgages, liens and pledges; b) shares, stocks and debentures of companies or interests in the property of such companies; c) claims to money or to any performed under contract having a financial value;
d) intellectual property rights and goodwill;
e) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract, or exploit natural resources.
4. The term "earnings" shall mean amounts yielded by an investment, particularly, though not exclusively, profits, interest, capital gains, dividends, royalties or fees.

5. The term "freely usable currency" shall mean the United States Dollar, Pound Sterling, Deutschmark French Franc, Japanese Yen, or any other currency that is widely used to make payments for international transactions and is widely traded in the principal exchange-markets.

6. The term "host country" shall mean the Contracting Party wherein the investment is made.

Article II. Applicability or Scope

1. This Agreement shall apply only to investments brought into, derived from or directly connected with investments brought into the territory of any Contracting Party by nationals or companies of any other Contracting Party and which are specifically approved in writing and registered by the host country and upon such conditions as it deems fit for the purposes of this Agreement.

2. This Agreement shall not affect the, rights and obligations of the Contracting, Parties with respect to investments which, under the provisions of paragraph 1 of this Article, do not fall within the scope of the Agreement.

3. This Agreement shall also apply to investments made prior to its entry into force, provided such investments are specifically approved in writing and registered by the host country and upon such-conditions as it deems fit for purpose of this Agreement subsequent in its entry into force.

Article III. General Obligations

1. Each Contracting Party shall, in a manner consistent with its national objectives, encourage and create favourable conditions in its territory for investments from the other Contracting Parties. All investments to which this Agreement relates shall, subject to this Agreement, be governed by the laws and regulations of the host country, including rules of registration and valuation of such investments.

2. Investments of nationals or companies of and obligations Party in the territory of other Contracting Parties shall at all times be accorded fair and equitable treatment and shall enjoy full protection and in the territory of the host country.

3. Each Contracting Party shall observe any obligation arising from a particular commitment it may have entered into Title with regard to a specific investment of nationals or companies of the other Contracting Parties.

Article IV. Treatment

1. Each Contracting Party shall, within its territory ensure full protection of the investments made in accordance with its legislation by investors of the other Contracting Parties and shall not impair by unjustified or discriminatory measures the management, maintenance, use, enjoyment, extension, disposition or liquidation of such investments.

2. All investments made by investors of any Contracting Party shall enjoy fair and equitable treatment in the territory of any other Contracting Party. This treatment shall be no less favourable than that granted to investor of the most-favoured-nation.

3. Investor of any Contracting Party who within the territory of another Contracting Party suffer damages in relation to their investment activities - in connection with their investments, owing to the outbreak of hostilities or a state of national emergency, shall be accorded treatment no less favourable than that accorded to investors of any - third country, as regards restitution, compensation or other valuable consideration Payments made under this provision shall be effectively realizable and freely transferable, subject to Article VII.

4. Any two or more of the Contracting Parties may negotiate to accord national treatment within the framework of this Agreement. Nothing herein shall entitle any other party to claim national treatment under the most-favoured-nation principle.

Article V. Exception

The Provision of this Agreement shall not apply to matters of taxation in the territory of the Contracting Parties. Such matters shall be governed by Avoidance of Double Taxation between Contracting Parties and the domestic laws of each Contracting Party.

Article VI. Expropriation and Coinipensation

1. Investments of nationals or companies of any Contracting Party shall not be subject to expropriation nationalisation or any measure equivalent thereto (in the article referred to as "expropriation"), except for public use, or public purpose, or in the public interest, and under due process of law, on a non-discriminatory basis and upon payment of adequate compensation. Such compensation shall amount to the market value of the investments affected, immediately before the measure of dispossession became public knowledge and it shall be freely transferable in freely-usable currencies from the host country. The compensation shall be settled and paid without unreasonable delay. The

National or company affected shall have the right, under the law of Contracting Party making the expropriation, to prompt review by a judicial body or some other independent authority of that Contracting Party in accordance with principles set out in this paragraph.

2. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in its territory, and in which nationals or companies of another Contracting Party own shares, it shall apply the provisions of paragraph 1 of this Article so as to ensure the compensation provided for in that Paragraph to such nationals or companies to the extent of their interest in the assets expropriated.

Article VII. Repatriation of Capital and Earnings

1. Each Contracting Party shall, subject to its laws, rules and regulations, allow without unreasonable delay the free transfer in any freely-usable currency of: a) the capital, net profits, dividends, royalties, technical assistance and technical fees, interests and other income, accruing from any investments of the nationals or companies of the other Contracting Parties; b) the proceeds from the total or partial liquidation of any investments made by nationals or companies of the other Contracting Parties; c) funds in repayment of loans given by nationals or companies of one Contracting Party to the nationals or companies of another Contracting Party which both Contracting Parties have recognized as investments:

d) the earnings of nationals of the other Contracting Parties who are employed and allowed to work in connection with an investment in its territory.

2. The exchange rate applicable to such transfer shall be the rate of exchange prevailing at the time of remittance.

3. The Contracting Parties undertake to accord to transfers referred to in paragraph (1) of this Article a treatment no less favourable than that accorded to transfer originating from investments made by nationals or companies of any third State.

Article VIII. Subrogation

If any of the Contracting Parties makes payment to any of its nationals or companies under a guarantee it has granted in respect of an investment made in the territory of another Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article IX and X, recognize the assignment of any right title or claim of such national or company to the former Contracting Party and the subrogation of the former Contracting Party to any such right, title or claim. This, however, does not necessarily imply a recognition on the part of the latter Contracting Party of the merits of any case or the amount of any claim arising therefrom.

Article IX. Dispute Between the Contracting Parties

1. Any dispute between and among, the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled amicably between the parties to the dispute. Such settlement shall be reported to the ASEAN Economic Ministers (AEM).

2. If such a dispute cannot thus be settled it shall be submitted to the AEM for resolution.

Article X. Arbitration

1. Any legal dispute arising directly out of an investment between any Contracting Party and a national or company of any of the other Contracting Parties shall, as far as possible, be settled amicably between the parties to the dispute.

2. If such a dispute cannot thus be settled within six months of its being raised, then either party can elect to submit the dispute for conciliation or arbitration and such election shall be binding on the other party. The dispute may be brought before the International Centre for Settlement of Investment Disputes (IGSID), the United Nations Commission on International Trade Law (UNCITRAL), the Regional Centre for Arbitration at Kuala Lumpur or any other regional centre for arbitration in ASEAN, whichever body the parties to the dispute mutually agree to appoint for the purposes of Conducting the arbitration.

3. In the event that the parties cannot agree within a period of three months on a suitable body for arbitration, an arbitral tribunal consisting of three members shall be formed. The Parties to the dispute shall appoint one member each, and these two members shall then select a national of a third Contracting Party to be the chairman of the tribunal, subject to the approval of the parties to the dispute. The appointment of the members and the chairman shall be made within two months and three months respectively, from the date a decision to form such an arbitral tribunal is made.

4. If the arbitral tribunal is not formed in the periods specified in paragraph 3 above, then either party to the dispute may, in the absence of any other relevant arrangement request the President of the International Court of Justice to make the required appointments.

5. The arbitral tribunal shall reach its decisions by a majority of votes and its decisions shall be binding. The Parties involved in the dispute shall bear the cost of their respective members to the arbitral tribunal and share equally the cost of the chairman and other relevant costs. In all other respects, the arbitral tribunal shall determine its own procedures.

Article XI. Consultation

The Contracting Parties agree to consult each other at the request of any Party on any matter relating to investments covered by this Agreement, or otherwise affecting the implementation of this Agreement.

Article XII. Amendments

All articles of this Agreement may be modified through amendments in writing to this Agreement agreed upon by consensus. All amendments shall become effective upon acceptance by all Contracting Parties.

Article XIII. Entry Into Force

1. This Agreement shall enter into force on the 30th day after the deposit of the sixth Instrument of Ratification and shall thereafter remain in force for a period of the years.

2. This Agreement shall thereafter continue in force unless terminated by any Contracting Party giving not less than six months written notice through diplomatic channels. Provided however, that in respect of investments made while the Agreement was in force, its provisions shall continue in effect with respect to such investments for a period of ten years after the date of termination, and without prejudice to the application thereafter of the rules of international law.

Article XIV. Miscellaneous Provisions

1. This Agreement may not be signed with reservation nor shall reservations be admitted at the time of ratification.

2. This Agreement shall be deposited with the Secretary-General of the ASEAN Secretariat who shall promptly furnish a certified copy thereof to each Contracting Party.

3. Each Contracting Party shall deposit its instrument of Ratification with Secretary-General of the ASEAN Secretariat who shall promptly inform each Contracting Party of such deposit.

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

DONE in Manila, Philippines this Fifteenth day of December Nineteen Hundred Eighty Seven in one original copy in the English Language.