

No. 7870. TREATY BETWEEN THE KINGDOM OF THAILAND AND THE FEDERAL REPUBLIC OF GERMANY CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS. SIGNED AT BANGKOK, ON 13 DECEMBER 1961

THE KINGDOM OF THAILAND AND THE FEDERAL REPUBLIC OF GERMANY

DESIRING to intensify economic cooperation between both States,

INTENDING to create favourable conditions for investments by nationals or companies of each State in the territory of the other State, and

RECOGNIZING that a contractual protection of such investments is apt to stimulate private business initiative and to increase the prosperity of both nations,

HAVE AGREED AS FOLLOWS:

Article 1.

(1) Each Contracting Party will endeavour to admit in its territory, in accordance with its legislation, the investment of capital by nationals or companies of the other Contracting Party, to promote such investments as far as possible, and to give sympathetic consideration to the granting of any relevant permits required.

(2) Investments owned by, or under the management or effective control of, nationals or companies of each Contracting Party shall in the territory of the other Contracting Party not be treated less favourably by that Party than it treats investments of its own nationals or companies or investments of nationals or companies of any third State.

Article 2.

Neither Contracting Party shall, in its territory subject to discriminatory treatment any activities carried on in connexion with investments including the management, use or enjoyment of such investments by nationals or companies of the other Contracting Party.

Article 3.

(1) Investments by nationals or companies of either Contracting Party shall enjoy the most constant protection and security in the territory of the other Contracting Party.

(2) Nationals or companies of either Contracting Party shall not be subjected to expropriation of their investments in the territory of the other Contracting Party except for the public benefit and against just compensation. Such compensation shall be actually realizable, freely transferable, and shall be made without undue delay. Adequate provision shall have been made at or prior to the time of the expropriation for the determination and the giving of such compensation. The legality of any such expropriation and the amount of compensation shall be subject to review by due process of law.

(3) Nationals or companies of either Contracting Party, who, owing to war or other armed conflict, revolution or revolt in the territory of the other Contracting Party suffer the loss of investments situate there, shall be accorded treatment no less favourable by such other Contracting Party than that Party accords to its own nationals or companies, as regards restitution, indemnification, compensation or other valuable consideration. With respect to the transfer of such payments, each Contracting Party shall accord to the requests of nationals or companies of the other Contracting Party a treatment no less favourable than is accorded to comparable requests made by nationals or companies of any third State.

(4) The provisions of paragraphs 1, 2 and 3 above shall likewise apply to returns from investments.

Article 4.

Each Contracting Party shall guarantee to nationals or companies of the other Contracting Party the transfer of the capital of the returns from it and, in the event of liquidation, of the proceeds from such liquidation.

Article 5.

If a claim arising out of a guarantee given for an investment is asserted against a Contracting Party, the latter shall, without prejudice to its rights under Article 11, be authorized on the conditions stipulated by its predecessor in title to exercise the rights having been assigned to such party by law or having been ceded to it by the predecessor in title (devolved interest). As regards the transfer of payments to be made by virtue of the devolved interest to the Contracting Party concerned, paragraphs 2 and 4 of Article 3 as well as Article 4 shall apply *mutatis mutandis*.

Article 6.

(1) Transfers under paragraphs 2, 3 or 4 of Article 3, under Article 4 or Article 5 shall be made without delay and at the rate of exchange effective on the day the transfer is made.

(2) The rate of exchange within the meaning of paragraph 1 above shall be based on the par value agreed with the International Monetary Fund and shall be within the margins above or below parity as permitted under section 3 of Article IV of the Articles of Agreement of the International Monetary Fund.

(3) If at the date of transfer no rate of exchange within the meaning of paragraph 2 above exists in respect of the Contracting Party concerned, the market rate for a freely convertible currency shall apply.

Article 7.

If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties in addition to the present Treaty, result in a position entitling investments by nationals or companies of the other Contracting Party to a treatment more favourable than is provided for by the present Treaty, such position shall not be affected by the present Treaty. Each Contracting Party shall observe any other obligation it may have entered into with regard to investments within its territory by nationals or companies of the other Contracting Party

Article 8.

(1) For the purpose of this Treaty, the term "investment" shall comprise every kind of asset, and more particularly, though not exclusively:

- a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges, usufructs and similar rights;
- b) Shares or other kinds of interest in companies;
- c) Rights of action for money or for any performance having an economic value;
- d) Copyrights, patents, trademarks, trade-names and good will;
- e) Business concessions under public law.

Any alteration of the form in which assets are invested shall not affect their classification as investment.

(2) The term "returns" shall mean the amounts yielded by an investment as profit or interest for a specific period.

(3) The term "nationals" shall mean

- a) In respect of the Federal Republic of Germany: German within the meaning of the Basic Law for the Federal Republic of Germany;
- b) In respect of the Kingdom of Thailand: Thai within the meaning of Thai law.

(4) The term "companies" shall mean any juristic person as well as any commercial or other company or association with or

without legal personality, having its seat in the territory of either Contracting Party and lawfully existing consistent with legal provisions, irrespective of whether the liability of its partners, associates or members is limited or unlimited and whether or not its activities are directed at profit.

Article 9.

The present Treaty shall also apply to approved investments made prior to its entry into force but not earlier than the 26th October 1960 by nationals or companies of either Contracting Party in the territory of the other Contracting Party in accordance with the latter's legislation.

Article 10.

Each Contracting Party shall grant national treatment within the framework of the present Treaty in consideration of the fact that national treatment in like matters is also granted by the other Contracting Party.

Article 11.

(1) Disputes concerning the interpretation or application of the present Treaty should, if possible, be settled by the Governments of the two Contracting Parties.

(2) If a dispute cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such arbitral tribunal shall be constituted for each individual case as follows: Each Contracting Party shall appoint one member and these two members shall agree upon a national of a third State as their chairman to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within two months, and such chairman within three months from the date on which either Contracting Party has informed the other Contracting Party that it wants to submit the dispute to an arbitral tribunal.

(4) If the periods specified in paragraph 3 above have not been observed, either Contracting Party may, in the absence of any other relevant arrangement, 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 if he is otherwise prevented from discharging the said function, the Vice-President should make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he, too, 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 should make the necessary appointments.

(5) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding. Each Contracting Party shall bear the cost of its own member and of its counsel in the arbitral proceedings; the cost of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal may make a different regulation concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 12.

The provisions of the present Treaty shall remain in force also in the event of a conflict arising between the Contracting Parties, without prejudice to the right of taking such temporary measures as are permitted under the general rules of international law. Measures of this kind shall be repealed not later than on the date of the actual termination of the conflict, irrespective of whether or not diplomatic relations have been re-established.

Article 13.

The present Treaty shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Kingdom of Thailand within three months from the entry into force of the present Treaty.

Article 14.

(1) The present Treaty shall be ratified; the instruments of ratification shall be exchanged as soon as possible in Bonn.

(2) The present Treaty shall enter into force one month after the date of exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall, unless notice of termination is given in writing by either Contracting Party

one year before its expiry, continue in force thereafter for an unlimited period. After the expiry of the period of ten years the present Treaty may be terminated at any time by either Contracting Party giving on year's notice.

(3) In respect of investments made prior to the date of termination of the present Treaty, the provisions of Articles 1 to 13 shall continue to be effective for a further period of ten years from the date of termination of the present Treaty.

IN WITNESS WHEREOF the undersigned duly authorized representatives of the Contracting Parties have signed the present Treaty.

DONE at Bangkok, on December 13th, B.E. 2504 corresponding to 1961 in six originals, two each in the Thai, in the German and in the English languages, all texts being equally authentic. In case of a divergent interpretation, the English text shall prevail.

For the Kingdom of Thailand:

Thanat KHOMAN Minister of Foreign Affairs Ambassador

PLERNG NOPADOL RABIBHADHANA Chairman of the Delegation

For the Federal Republic of Germany:

Dr. Hans Bidder Ambassador

Dr. Kurt Daniel Chairman of the Delegation

Protocol

On signing the Treaty concerning the Promotion and Reciprocal Protection of Investments concluded between the Kingdom of Thailand and the Federal Republic of Germany, the undersigned duly authorized representatives have, in addition, agreed on the following provisions which should be regarded as an integral part of the said treaty :

(1) To Article 1

a) Each Contracting Party is free to decide, in accordance with its legislations and rules and regulations framed thereunder and with due regard to its policies and published plans, whether it will grant a permit required. When a permit is issued the respective investment enjoys full protection of this Treaty.

b) In respect of investments in the territory of the Kingdom of Thailand, the term "investment", wherever it is used in this Treaty, shall refer to all investments made in projects classified in the certificate of admission by the appropriate authority of the Kingdom of Thailand in accordance with its legislation and administrative practice as an "approved project".

(2) To Article 2

The following shall in particular be deemed discriminatory treatment as referred to in Article 2: Restricting the purchase of raw or auxiliary materials, of power or fuel, or of means of production or operation of any kind; impeding the marketing of products within or outside the country, as well as any other measures not applied to the same extent either to its own nationals and to nationals of third states or to investments of such persons.

Measures taken for reasons of public security and order, public health or morality or specific rights and benefits granted in the documents of admission of investment shall not be deemed discriminatory treatment within the meaning of Article 2.

(3) To Article 3

a) The term "expropriation" within the meaning of paragraph 2 of Article 3 shall also pertain to acts of sovereign power which are tantamount to expropriation, as well as measures of nationalization.

b) The expression "just compensation" as referred to in paragraph 2 of Article 3 shall mean fair and equitable compensation to be assessed in conformity with the principles of international law.

(4) To Article 4

a) Liquidation within the meaning of Article 4 shall be deemed to include any disposal effected for the purpose of completely or partly giving up the investment concerned.

b) In the case of transfers from Thailand under Article 4 the Bank of Thailand may, when considerations regarding exchange market stability and balance of payments necessitate the introduction of measures to assure the availability of foreign exchange, specify that large amounts shall be transferred in instalments of:

1. The equivalent of two million baht per month in case of commercial enterprises,
2. The equivalent of four million baht per month in case of industrial enterprises.

(5) To Article 6

a) A transfer shall be deemed to have been made "without delay" within the meaning of paragraph 1 of Article 6 when made within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the relevant request has been correctly submitted to the Exchange Control Authority—accompanied by a tax clearance certificate, if so required,—and may on no account exceed two weeks.

b) In the case of Thailand, the market rate of exchange within the meaning of paragraph 3 of Article 6 shall be the rate of exchange published by the Thai Bankers' Association.

c) In case there are in the territory of one of the Contracting Parties more than one rate of exchange within the meaning of Article 6 paragraph 3, the appropriate authority shall admit a rate of exchange that is fair and equitable for such transfers.

(6) Each Contracting Party shall refrain from any measures which, contrary to the principles of free competition, may prevent or hinder sea-going vessels of the other Contracting Party from participating in the transport of goods that are intended for investment within the meaning of the present Treaty. This also applies to goods acquired in the territory of either Contracting Party or of any third State with funds of an enterprise in which capital within the meaning of the present Treaty is invested.

IN WITNESS WHEREOF the undersigned duly authorized representatives of the Contracting Parties have signed the present Protocol.

DONE at Bangkok, on December 13th, B.E. 2504, corresponding to 1961 in six originals, two each in the Thai, in the German and in the English languages, all texts being equally authentic. In case of a divergent interpretation, the English text shall prevail.

For the Kingdom of Thailand:

Thanat KHOMAN Minister of Foreign Affairs Ambassador

PLERNG NOPADOL RABIBHADHANA Chairman of the Delegation

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