

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF CAMBODIA AND THE GOVERNMENT OF THE KINGDOM OF THAILAND FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

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

Desiring to create favourable conditions for greater economic cooperation between them and, in particular, for the investments by investors of one Contracting Party in the territory of the other Contracting Party.

Recognizing that the encouragement of investments and the reciprocal protection of investments under international agreement will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

Have agreed as follows:

## **Article 1:. Definitions**

For the purposes of this Agreement:

1. "investor" means:

(a) Any natural person possessing the citizenship or nationality in a Contracting Party in accordance with its law; or

(b) Any juridical persons which include corporation, partnership, trust, joint-venture, organization, association or enterprise incorporated or duly constituted in accordance with applicable laws of that Contracting Party,

2. The term "investments" shall mean every kind of asset, including, in particular, but not exclusively:

(a) Movable and immovable property and any other property rights such as mortgages, liens or pledges,

(b) Shares, stock and debentures of companies wherever incorporated or interests in the property of such companies,

(c) Claims to money or to any performance under contract having financial value,

(d) Intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, industrial designs, trade secrets, technical processes and know-how and goodwill,

(e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

3. The term "returns" shall mean the amounts yielded by an investment and, in particular, though not exclusively, shall include profit, interest, capital gains, dividends, royalties or fees;

4. The term "territory" shall mean territory over which Contracting Party has sovereignty and/or jurisdiction;

5. "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;

6.

(a) The term "investments" referred to in paragraph 2 shall only refer to all investments that are made in accordance with the Law and regulations of the Contracting Parties.

(b) Any alteration of the form in which assets are invested shall not affect their classification as investments, provided that

such alteration is not contrary to the approval under Article 2, if any, granted in respect of the assets originally invested.

## **Article 2:. Scope of Application of the Present Agreement**

The benefits of this Agreement shall apply in cases where the investments by investors of one Contracting Party in the territory of the other Contracting Party have been admitted in accordance with the laws and regulations, and where applicable, specifically approved in writing by the competent authorities concerned of the Contracting Party

## **Article 3:. Promotion and Protection of Investment**

1. Each Contracting Party shall encourage and facilitate the investments in its territory by the investors of the other Contracting Party.

2. Investments of investors of either Contracting Party shall at all time be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

## **Article 4:. Treatment of Investment**

1.

(a) Investments of investors of one Contracting Party in the territory of the other Contracting Party, and also the returns therefrom, shall receive treatment which is fair and equitable and not less favourable than that accorded in respect of the investments and returns of the investors of the latter Contracting Party or of any third State.

(b) Each Contracting Party shall in its territory accord to investors of the other Contracting Party as regards the management, use, enjoyment or disposal of their investments, treatment which is fair and equitable and not less favourable than that which it accords to its own investors or to the investors of any third State.

(c) Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

## **Article 5:. Exceptions**

The provisions of this Agreement relating to the grant of treatment not less favourable than that accorded to the investors of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

(a) The formation or extension of a customs union or a free trade area or a common external tariff area or a monetary union or a regional association for economic cooperation; or

(b) The adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or

(c) The grant, to a particular person or company of the status of a "promoted person" under the law of Thailand on the promotion of investment; or

(d) Any international agreement or arrangement, or any domestic legislation, relating wholly or mainly to taxation.

## **Article 6:. Expropriation and Compensation for Losses**

1.

(a) In any case where investments of an investor of one Contracting Party are subjected, directly or indirectly, to any measure of expropriation or nationalization including measures having effect equivalent to expropriation or nationalization, the investor concerned shall be accorded in territory of the other Contracting Party fair, equitable and non-discriminatory treatment in relation to any such measure. No such measure shall be taken except for public purposes and against payment of compensation. Such compensation shall be adequate, taking into account generally recognized rules of international law shall be made without delay and freely transferable in freely usable currencies.

(b) The legality of any expropriation or nationalization and the amount and method of payment of compensation shall be subject to review by due process of law.

2. Where investments of an investor of one Contracting Party in the territory of the other Contracting Party suffer loss owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the other Contracting Party, the investor concerned shall be accorded treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than would be accorded in the same circumstances to an investor of the other Contracting Party or to an investor of any third State.

3. Without prejudice to the foregoing provisions of this Article, the investors of one Contracting Party shall, in respect any matter dealt with therein, be accorded in the territory of the other Contracting party treatment not less favorable than that accorded to the investors of the latter Contracting party or of any third State.

## **Article 7. Free Transfers**

1. Each Contracting Party shall allow without delay the free transfer investment and returns in freely usable currencies, in particular, but not limited to:

(a) The capital, net profits, dividends, royalties, technical assistance and technical fees, interest and other current income, accruing from any investment of the investors of the other Contracting Party;

(b) The proceeds from the total or partial liquidation of any investment made by the investors of the other Contracting Party;

(c) Funds in repayment of borrowing/loans given by investors of one Contracting Party to the investors of the other Contracting Party which both Contracting Parties have recognized as investment;

(d) The earnings and other compensation of investors of the other Contracting Party who are employed and allowed to work in connection with an investment in the territory of the other Contracting Party; and

(e) The payment of compensation under Article 6.

2. The exchange rates applicable to such transfer in the paragraph 1 of the Article shall be the market rate of exchange prevailing at the time of remittance.

3. The Contracting Parties undertake to accord to the transfers referred to in paragraph 1 of this Article treatment as favorable as that accorded to the transfer originating from investments made by investors of any third State.

## **Article 8. Subrogation**

1. If either Contracting Party or an agency designated by it makes payment to an investor under a policy of insurance or guarantee covering non-commercial risks, which it has given in respect of any investment or any part thereof in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) The assignment, whether under law or pursuant to a legal transaction, of any right or claim from such an investor to the former Contracting Party or its designated agency; and

(b) That the former Contracting Party designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of such an investor.

2. The former Contracting Party or its designated agency shall, accordingly, be entitled to assert, if it so desires, any such right or claim to the same extent as its predecessor in title.

3. If the former Contracting Party acquires amounts in the lawful currency of the other Contracting Party or credits thereof by virtue of an assignment under subparagraph (a) of paragraph 1 of this Article, such amounts and credits shall be freely available to the former Contracting Party for the purpose of meeting its expenditure in the territory of the latter Contracting Party.

## **Article 9. Other Obligations**

Each Contracting Party shall observe any obligation, additional to those specified in this Agreement, into which it may have entered with regard to investments of investors of the other Contracting Party.

## **Article 10. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. In case of dispute with respect to investments between a Contracting Party and an investor of the other Contracting Party, consultations will 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 aforesaid investor may submit the dispute, at his choice, for settlement to:
  - (a) The competent courts of the Contracting Party in the territory of which the investment has been made;
  - (b) The International Center for Settlement of Investment Disputes (ICSID) in case both Contracting Parties are Contracting States to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington D.C. on March 18, 1965; and
  - (c) An arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) where both parties to the dispute so agreed.

## **Article 11. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultation or negotiation.
2. If a dispute between the Contracting Parties can not thus be settled within six months, it shall at the request of either Contracting Party, be submitted to an arbitral tribunal.
3. Within two months of the receipt of the request for arbitration, such an arbitral tribunal shall be constituted for each individual case as follows:
  - (a) Each Contracting Party shall appoint one member, and these 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
  - (b) 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 relevant 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 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, 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 shall be invited to make the necessary appointments.
5.
  - (a) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Parties.
  - (b) Subject to the power of the arbitral tribunal to give a different ruling concerning costs, the cost of its own member and of its representation in the arbitral proceedings shall be borne by each Contracting Party and the cost of the Chairman and the remaining costs shall be borne in equal parts by the two Contracting Parties.
  - (c) In all respects other than those specified in subparagraphs (a) and (b) of this paragraph, the arbitral tribunal shall determine its own procedure.

## **Article 12. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force thirty (30) days after the later date on which the Governments of the Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled. The later date shall refer to the date on which the last notification letter is sent.
2. This Agreement shall be in force for a period of ten (10) years and shall remain in force thereafter unless terminated in accordance with paragraph 3 of this Article.
3. Either Contracting Party may by giving one (1) year's written notice to the other Contracting Party, terminate this Agreement within the initial ten (10) years period or anytime thereafter.
4. With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of all of the other Articles of this Agreement shall continue to be effective for a period of ten (10) years from such date of

termination.

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

DONE in duplicate in Bangkok on this 30th day of March 1995, in the Khmer, Thai, and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE KINGDOM OF CAMBODIA KEAT CHHON, Senior Minister in charge of Rehabilitation and Development, Vice-Chairman, Council for the Development of Cambodia

FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND