

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF THAILAND AND THE GOVERNMENT OF THE ARGENTINE REPUBLIC FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Kingdom of Thailand and the Government of the Argentine Republic, hereinafter referred to as "the Contracting Parties";

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

Recognising that the encouragement of such investments of capital and the reciprocal protection of investments under an 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 purpose of this Agreement:

1. The term "investor" shall mean:

(a) Any natural person who possesses the nationality of either Contracting Party in accordance with the law in force in the territory of that Contracting Party,

(b) Any juridical person incorporated or constituted under the law in force in the territory of either Contracting Party whether or not with limited liability and whether or not for pecuniary profit and having its seat in the territory of that Contracting Party.

2. The term "investment" shall mean, in conformity with the laws and regulations of the Contracting Party in whose territory the investment is made, every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party, in accordance with the latter's laws. It includes in particular, though 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 or interests in the property of such companies;

(c) Claims to money or to any performance under contract having financial value, loans only being included when they are directly related to an investment;

(d) Intellectual and industrial property rights including, in particular, copyrights, patents, industrial designs, trademarks, trade names, technical processes, 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 the territory of each Contracting Party including the territorial sea and the other adjacent maritime areas over which the Contracting Party concerned may exercise sovereign rights or jurisdiction according to international law.

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

1. The provisions of this Agreement shall apply only in cases where the investment by the investors of one Contracting Party in the territory of the other Contracting Party has been admitted or otherwise approved in writing, if necessary, by the competent authority in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made.

2. This Agreement shall apply to all investments, whether made before or after the date of entry into force of this Agreement, but the provisions of this Agreement shall not apply to any dispute or difference which arose before its entry into force.

3. The provisions of this Agreement shall not apply to the investments made by natural persons who are nationals of one Contracting Party in the territory of the other Contracting Party if such persons have, at the time of investment, been domiciled in the latter Contracting Party for more than two years, unless it is proved that the investment was admitted into its territory from abroad.

### **Article 3. Promotion and Protection of Investments**

1. Each Contracting Party shall, having regard to its plans and policies, encourage and facilitate the investments in its territory by the investors of the other Contracting Party.

2. Investments of investors of one Contracting Party in the territory of the other Contracting Party shall enjoy the most constant protection and security.

### **Article 4. Treatment of Investments**

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, whichever may be more favourable to the investors concerned.

(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, equitable, non-discriminatory and not less favourable than that which it accords to its own investors or to the investors of any third State, whichever may be more favourable to the investors concerned.

(c) All the provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the investors of any third State shall be interpreted as meaning that such treatment shall be accorded immediately and unconditionally.

2. 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 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 Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

(a) Any existing or future free trade area agreement, a customs or economic union, common market or a similar regional organization to which either Contracting Party is or may become a party; or

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

(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) The bilateral agreements providing for concessional financing concluded by the Argentine Republic with Italy on 10 December 1987 and with Spain on 3 June 1988.

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

1. Neither of the Contracting Parties shall take directly or indirectly any measure of nationalization or expropriation or any other measure having the same effect against investments in its territory belonging to investors of the other Contracting Party, unless the measures are taken for public purpose, on a non-discriminatory basis and under due process of law. The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment affected by any or such measures, shall be paid without delay and shall be effectively realizable and freely transferable.

2. Where a Contracting Party expropriates asset of a company which is incorporated or constituted under the law in force in any part of its territory, and in which an investor of the other Contracting Party owns shares, it shall ensure that the provisions of paragraph 1 of this Article are applied to the extent necessary to guarantee compensation as specified therein to such investor of the other Contracting Party who is the owner of those shares. paragraph 1 of this Article are applied to the extent necessary to guarantee compensation as specified therein to such investor of the other Contracting Party who is the owner of those shares.

3. Where investments of an investor of one Contracting Party in the territory of the other Contracting Party suffer losses 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 that accorded in the same circumstances to an investor of the latter Contracting Party or to an investor of any third State.

4. Without restricting the generality of the provisions contained in Article 4 of this Agreement, the investors of one Contracting Party shall, in respect of any matter dealt with therein, be accorded in the territory of the other Contracting Party treatment not less favourable than that accorded to the investors of the latter Contracting Party or of any third State. Article 4 of this Agreement, the investors of one Contracting Party shall, in respect of any matter dealt with therein, be accorded in the territory of the other Contracting Party treatment not less favourable than that accorded to the investors of the latter Contracting Party or of any third State.

## **Article 7. Transfer of Investments and Returns**

1. Each Contracting Party shall grant to investors of the other Contracting Party the free transfer of investments and returns and in particular, though not exclusively, of:

(a) The capital and additional sums necessary for the maintenance and development of the investments;

(b) Gains, profits, interests, dividends and other current income;

(c) Funds in repayment of loans as defined in Article 1, paragraph 2, (c); paragraph 2, (c);

(d) Royalties and fees;

(e) The proceeds from a total or partial sale or liquidation of an investment;

(f) Compensations provided for in Article 6; Article 6;

(g) The earnings of nationals of one Contracting Party who are allowed to work in connection with an investment in the territory of the other Contracting Party.

2. Transfers shall be effected without delay in freely convertible currency, at the market rate exchange prevailing on the date of the transfer, in accordance with the procedures established by the Contracting Party in whose territory the investment was made which shall not impair the substance of rights set forth in this Article.

## **Article 8. Subrogation**

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

(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 or its 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. 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.
4. In case of subrogation, as defined in paragraphs 1 and 2 above, the investor shall not pursue a claim unless authorized to do so by the Contracting Party or its designated agency thereof. paragraphs 1 and 2 above, the investor shall not pursue a claim unless authorized to do so by the Contracting Party or its designated agency thereof.

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

1. Any dispute which arises within the terms of this Agreement concerning an investment between an investor of one Contracting Party and the other Contracting Party shall, if possible, be settled amicably.
2. If the dispute cannot thus be settled within six months following the date on which the dispute has been raised by either party, it may be submitted to:
  - (a) The competent tribunal of the Contracting Party in whose territory the investment was made or
  - (b) International arbitration according to the provisions of paragraph (3). paragraph (3).
3. Where a dispute has been raised by the investor and the Parties disagree as to the choice of (a) or (b), the opinion of the investor shall prevail.
4. Pursuant to Paragraphs 2) and 3), where an investor or a Contracting Party has submitted a dispute to the aforementioned competent tribunal of the Contracting Party where the investment has been made or to international arbitration, this choice shall be final. Paragraphs 2) and 3), where an investor or a Contracting Party has submitted a dispute to the aforementioned competent tribunal of the Contracting Party where the investment has been made or to international arbitration, this choice shall be final.
5. In case of international arbitration, the dispute shall be submitted to:
  - (a) The International Centre for the Settlement of Investment Disputes (ICSID) created by the "Convention on the Settlement of Investment Disputes between States and Nationals of other States" opened for signature in Washington D.C. on 18th March 1965, once both Contracting Parties herein become members thereof. As far as this provision is not complied with, each Contracting Party consents that the dispute be submitted to arbitration under the regulations of the ICSID Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings, or "Convention on the Settlement of Investment Disputes between States and Nationals of other States" opened for signature in Washington D.C. on 18th March 1965, once both Contracting Parties herein become members thereof. As far as this provision is not complied with, each Contracting Party consents that the dispute be submitted to arbitration under the regulations of the ICSID Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings, or
  - (b) An arbitration tribunal set up from case to case in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).
6. If after a period of three months following written notification of the submission of the dispute to arbitration there is not agreement on the selection of a forum under Section 5 (a) or Section 5 (b), the parties to the dispute shall be bound to submit it to the International Centre for the Settlement of Investment Disputes. Section 5 (a) or Section 5 (b), the parties to the dispute shall be bound to submit it to the International Centre for the Settlement of Investment Disputes.
7. The arbitration tribunal shall decide in accordance with the provisions of this Agreement, the laws of the Contracting Party involved in the dispute, including its rules on conflict of law, the terms of any specific agreement concluded in relation to such an investment and the relevant principles of international law.
8. The arbitral decisions shall be final and binding for the parties in the dispute. Each Contracting Party shall execute them in accordance with its laws.

## **Article 10. 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 consultations or negotiations.

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. 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 said members shall be appointed within three months, and the Chairman within four months, from the date on which either Contracting Party shall have informed the other Contracting Party that it proposes to submit the dispute to an 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 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. 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 Contracting Parties.

(b) Each Contracting Party shall bear the cost of its own member of the arbitral tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall in principle be borne in equal parts by the two Contracting Parties. The 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.

(c) In all respects other than those specified in subparagraphs (a) and (b) of this paragraph, the arbitral tribunal shall determine its own procedure. subparagraphs (a) and (b) of this paragraph, the arbitral tribunal shall determine its own procedure.

## **Article 11. More Favourable Provisions**

If the provisions of law of either Contracting Party or obligations under international law existing at present or established thereafter between the Contracting Parties or if any agreement between an investor of one Contracting Party and the other Contracting Party contain more favourable rules for the investors, such rules shall be applicable.

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

This Agreement shall enter into force thirty days after the date on which the Contracting Parties shall have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled. It shall remain in force for an initial period of ten years. It shall thereafter continue to be in force indefinitely, subject to the right of either Contracting Party to terminate it by twelve months' prior notice in writing to the other Contracting Party, which notice may be given at any time after the expiry of the ninth year. However, with respect to an investment made while the Agreement is in force, its provisions shall continue to have effect for a period of ten years from the date of its termination.

DONE at Bangkok on 18th February 2000 in duplicate, in the Thai, Spanish and English languages, all texts being equally authentic. In case there is any divergence of interpretation of the provisions, the English text shall, however, prevail.

FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND [Signature]

FOR THE GOVERNMENT OF THE ARGENTINE REPUBLIC [Signature]