

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF THAILAND AND THE GOVERNMENT OF ROMANIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Kingdom of Thailand and the Government of Romania, (hereinafter referred to as "the Contracting Parties")

Desiring to develop the economic cooperation between the two States and to create favourable conditions for investments by the investors of one Contracting Party in the territory of the other contracting Party,

Conscious of the necessity to create and maintains & stable framework, in order to stimulate the investments and maximize effective utilization of economic resources of either State,

Recognising that the encouragement and reciprocal protection of investments, according to the present Agreement, will be conducive to the stimulation of initiative in this field and will increase prosperity of both States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall mean every kind of assets owned by an investor of one Contracting Party, including goods, rights and financial means, invested in the territory of the other Contracting Party in accordance with the Laws and regulations of the Contracting Party in whose territory the investment is made. The term includes 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 in companies incorporated in the territory of one Contracting Party;

(c) reinvested returns

(d) claims to money and other rights relating to performance having financial values

(e) Intellectual and industrial property rights, including copyrights, trademarks, trade names, patents, technological processes, know-how, goodwill and other similar rights recognized by the laws of the Contracting Party in whose territory the investment is made; and

(f) concessions conferred by law or by virtue of contract, particularly the concessions related to prospection, exploration, extraction and exploitation of natural resources, including those in the maritime areas under the Jurisdiction of the Contracting Party in whose territory the investment is made.

2. The term "investor" means any natural or juridical person of one Contracting Party who invests in the territory of the other Contracting Party:

(a) the term "natural person" means any natural person having the nationality in respect of the Kingdom of Thailand and citizenship in respect of Romania in accordance with their respective laws; and

(b) the term "juridical person" means, with respect to either Contracting Party, any entity incorporated or constituted in accordance with, and recognized as juridical person by its law.

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

4. The term "territory" shall mean the territory over which the respective Contracting Parties have sovereignty or jurisdiction under the international law.

5. The term "expropriation" shall also include acts of sovereign power which are tantamount to expropriation, as well as measures of nationalization.

Article 2. Promotion and Protection of Investments

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

2. Investments shall be admitted in accordance with legal provisions of the Contracting Party in the territory in which the investment is made and shall enjoy the protection and guarantees provided for in this Agreement.

3. The benefits 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 law and regulations of the Contracting Party in whose territory the investment is made.

4. Each Contracting Party undertakes to provide effective means of asserting claims and enforcing rights with respect to investment agreement, investment authorizations and properties. Each Contracting Party shall not impair the right of the investors of the other Contracting Party to have access to its courts of justices, administrative tribunals and agencies and all other bodies exercising adjudicatory authority.

5. Each Contracting Party shall make public all laws and regulations that pertain to or affect investments in its territory to the investors of the other Contracting Party.

Article 3. Investment Treatment

1. (a) Investments of the investors of one Contracting Party in the territory of the other Contracting Party, as 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 the 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.

2. 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) the formation or extension of a customs union or a free trade area or a common external tariff area or monetary union or a regional association for economic cooperations 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) any arrangement with a third country or countries in the same geographical region designed to promote regional cooperation in the economic, social, labour, industrial or monetary fields within the framework of specific projects; or

(d) 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

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

Article 4. Expropriation and Compensation

(a) In any case where investments of an investor of one Contracting Party are subjected, directly or indirectly, to any measure of expropriation, the investor concerned shall be accorded in the territory of the other Contracting Party fair, equitable and non-discriminatory treatment in relation to any such measure. No such measure shall be taken against the investment except for public purposes, in due process of law and against payment of compensation. Such compensation shall be adequate, effectively realisable, made without undue delay and freely transferable in freely convertible currencies.

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

Article 5. Compensation for Losses

The investors of one Contracting Party whose investments made in the territory of the other Contracting Party suffered losses owing to war or other armed conflict, a state of national emergency, revolution, revolt, insurrection shall be accorded by the latter Contracting Party, as regard the measures taken to cover the losses, treatment not less favourable than that it accords to the investors of any third State. The amounts of compensation under this Article shall be freely transferable.

Article 6. Transfers

1. Each Contracting Party guarantees to the investors of the other Contracting Party, in respect of their investments, subject to its laws and regulations and its rights and obligations as a member of the International Monetary Fund, the free transfer of:

(a) capital and returns from an investment;

(b) proceeds accruing from the total or partial sale, alienation or liquidation of an investment;

(c) payments made for the reimbursement of credits for investments and interest due; and

(d) adequate portion of earnings of the investors of the other Contracting Party deriving from their work and service in connection with an investment in its territory.

2. Each Contracting Party shall, where applicable, after fulfilment of the legal obligations pertaining to the investors, issue the necessary licenses in order to ensure the execution without delay of the transfers.

3. The above transfers shall be made in the convertible currency in which the investment has been made or in any other freely convertible currency at the rate of exchange in force at the date of the transfer.

4. "Without delay", in the meaning of this Article, are considered the transfers which are made within a period normally required to prepare the formalities of transfer. The time runs from the date when the application together with necessary documents were submitted, in the proper way, to the competent authorities and should not exceed, in any case, a period of two months.

Article 7. Subrogation

1. If either Contracting Party or its designated agency makes payment to one of its investors under a guarantee against non-commercial risks it has given in respect of an investment or any part thereof invested 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, claim and obligation from that 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 that investor and shall assume the obligations related to the investment including payment of taxes and fees.

2. The former contracting Party shall accordingly, if it so desires, be entitled to assert any such right or claim to the same extent and subject to the same restrictions 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 8. 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 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 centre for Settlement of Investment Disputes 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 ad hoc arbitral tribunal, if both parties to the dispute so agreed,

Article 9. 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. 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.

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 10. Application

This Agreement shall also apply to investments made by the investors of either Contracting Party in the territory of the other Contracting Party prior to the entry into force of this Agreement and accepted in accordance with the legal provisions in force of either Contracting Party. However, the Agreement shall not apply to the disputes arising before the entry into force of this Agreement.

Article 11. Preservation of Rights

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

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 legal 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 approved 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.

IN WITNESS WHEREOF, the Undersigned, being duly authorized

by their respective Governments, have Signed this Agreement.

DONE in duplicate, on this 30th day of April 1993, in the English language.

FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND

Squadron Leader

(Prasong Soonsiri)

Minister of Foreign Affairs

FOR THE GOVERNMENT OF ROMANIA

(Teodor Viorel Melescanu)

State Minister and Minister of Foreign Affairs

Letters exchanged

The Ministry of Foreign Affairs presents its compliments to the Embassy of Romania and, with reference to the Embassy's Note No. 374 dated 14 March 1994 informing the Ministry that on 25 February 1994 the Parliament of Romania had ratified the Agreement between the Government of the Kingdom of Thailand and the Government of Romania for the Promotion and Protection of Investments, signed at Bangkok on 30 April 1993, has the honour to inform the Embassy -that-the-Government of: the Kingdom of Thailand has completed its legal requirements for the 'entry into force of the said Agreement, and that by virtue of its Article 12 the Agreement will enter into force thirty days after the date on this notification.

The Ministry of Foreign Affairs avails itself of this opportunity to renew to the Embassy of Romania the assurances of its highest consideration.

The Embassy of Romania,

BANGKOK,

EMBASSY OF ROMANIA

BANGKOK

The Embassy of Romania presents its compliments to the Minister of Foreign Affairs of Thailand and has the honour to inform the latter that the Parliament of Romania ratified.- bY the Law No-7, on February 25,1994 the agreement between the Government of Romania and the Government of the Kingdom of Thailand for. the Promotion and Protection of Investments, signed in Bangkok, on April 30 1993.

The Minister of Foreign Affairs of Romania notified the Royal Thai Embassy in Bucharest through a Verbal Note on March 4,1994 upon the above mentioned act.

The Embassy of Romania would like to be notified b" the Thai part of the fulfilment of the legal requirements, when the' will be accomplished, for the entry into force of the Agreement, as it is stated in the Article 12 of the document.

The Embassy of Romania avails itself of this opportunity to renew to the Minister of Foreign affairs the assurances of its highest consideration.

To THE MINISTER OF FOREIGN AFFAIRS BANGKOK

Ministerul Afacerilor Externe al României prezintă și Salutul și Ambasadei Regatului Thai la București și are onoarea să-l facă cunoscut și Parlamentului României, prin Legea nr.7 din 25 februarie 1994, « ratificat Acordul între Guvernul României și Guvernul Regatului Thai privind promovarea și protejarea investițiilor, semnat la Bangkok la 30 aprilie 1993.

' În conformitate cu prevederile articolului 12 din Acord, acesta va intra în vigoare la 30 de zile de la data la care Partea igeră vor fi notificat una cealaltă și au fost îndeplinite cerințele lor legale pentru intrarea în vigoare a acestuia, adică la data la care Partea thailandeză va notifica Partea românească și a îndeplinit procedura atipulată' la articolul menționat din Acord.

Ministerul Afacerilor Externe roagă ambasada #4 confirmarea primirea prezentei note verbale, iar despre conținutul acesteia să informeze organele competente ale țării sale.

Ministerul Afacerilor Externe al României folosește și acest prilej pentru a reînnoi Ambasadei Regatului Thai asigurarea finealței sale. conșiderații.

București, 4. martie 1994

AMBASADEI THAILANDEI ~ în oras -

MINISTRY OF FOREIGN AFFAIRS OF ROMANIA

The Ministry of Foreign Affairs of Romania presents its compliments to the Embassy of the Kingdom of Thailand in Bucharest and has the honour to inform the latter that the Parliament of Romania, through Law No.7 dated 25 February 1994, ratified the Agreement between the Government of Romania and the Government of the Kingdom of Thailand concerning the promotion and protection of investments, signed in Bangkok on 30 April 1993,

According to the stipulations of Article 12 of the Agreement, it will come into force in 30 days since the date on which the Sides had notified to each other that all their legal requirements have been met for its coming into force, that is at the date on which the Thai Side will notify the Romanian Side that it met the procedure stipulated in the above-mentioned article of the Agreement,

The Ministry of Foreign Affairs kindly requests the Embassy to confirm the receipt of the present Verbal Note, and to inform the authorities concerned about its contents.

The Ministry of Foreign Affairs of Romania avails itself of the opportunity to renew to the Royal Thai Embassy the assurances of its high consideration,

Bucharest, 4 March 1994

TO THE ROYAL THAI EMBASSY

- in town =

EMBASSY OF ROMANIA

BANGKOK

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The Minister of Foreign Affairs of Romania notified the Royal Thai Embassy in Bucharest through a Verbal Note on March 4, 1994 upon the above mentioned act.

The Embassy of Romania would like to be notified by the Thai part of the fulfilment of the legal requirements, when they will be accomplished, for the entry into force of the Agreement, as it is stated in the Article 12 of the document.

The Embassy of Romania avails itself of this opportunity' to renew to the Minister of Foreign Affairs the assurances of its highest consideration.

To: THE MINISTER OF FOREIGN AFFAIRS BANGKOK.