

Agreement between the Swiss Confederation and the Kingdom of Thailand on the Promotion and Reciprocal Protection of Investments

Preamble

The Swiss Federal Council and the Government of the Kingdom of Thailand, hereinafter referred to as "Contracting Parties",

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

Convinced that the encouragement of such investments and the reciprocal protection of investments under this agreement will be conducive to the stimulation of individual business initiative and will foster prosperity in both States

Have agreed as follows:

Article 1

Definition

For the purpose of this Agreement:

- (1) The term "investor" refers with regard to either Contracting Party to:
 - (a) natural persons who, according to the law of that Contracting Party, are considered to be its nationals;
 - (b) juridical persons which are constituted or otherwise organised under the law of that Contracting Party and are engaged in substantive business operations in that Contracting Party;
 - (c) juridical persons not established under the law of that Contracting Party
 - (i) in which more than 50 per cent of the equity interest is beneficially owned by persons of that Contracting Party; or
 - (ii) in relation to which persons of that Contracting Party have the power to name majority of their directors or otherwise legally direct their actions.
- (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 other kinds of interest in the property of such companies,
 - (c) claims to money or to any performance under contract having financial value,
 - (d) intellectual property rights, 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, royalties or fees;
- (4) The term "territory" shall mean the territory of each Contracting Party including the maritime areas adjacent to the coast of the State concerned, to the extent to which that State may exercise sovereign rights or jurisdiction in those areas according to international law.

Article 2

Application, invocation

(1) The present Agreement shall apply to investments in the territory of one Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party, whether prior to or after the entry into force of the Agreement. It shall, however, not be applicable to divergences or disputes, which have arisen prior to its entry into force.

(2) Without prejudice to the provisions of paragraph (1), each Contracting Party may with respect to investments in its territory of investors of the other Contracting Party make dependent the right of any such investor to raise a claim under the present Agreement on the condition that the investment concerned has been approved by its authorities.

Article 3 Encouragement, admission

Each Contracting Party shall, having regard to its economic plans or policies, encourage and facilitate the investment in its territory by investors of the other Contracting Party and shall, in accordance with its laws and regulations, admit or approve such investments, if so required.

(2) When a Contracting Party shall have admitted an investment on its territory, it shall grant, in accordance with its laws and regulations, the permits that may be necessary in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, endeavour to issue the necessary authorisations concerning the activities of consultants and other qualified persons of foreign nationality.

Article 4 Protection, Treatment

(1) Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. 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.

(2) Each Contracting Party shall in its territory accord investments or returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State, whichever is more favourable to the investor concerned.

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

(4) If the legislation of either Contracting Party entitles investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such legislation shall to the extent that it is more favourable prevail over this Agreement.

Article 5
Dispossession, compensation

(1) In any case where investments of an investor of one Contracting Party are subjected in the territory of the other Contracting Party to measures of expropriation or nationalisation, including measures having effect equivalent to expropriation or nationalisation, the investor concerned shall be treated on a non-discriminatory basis. No such measure shall be taken except for a public purpose and provided that provisions be made for effective and adequate compensation. The amount of compensation shall be paid without delay in a freely convertible currency and be freely transferable. The legality of any measure of expropriation or nationalisation as well as the amount and method of payment of compensation shall be subject to review by due process of law.

(2) Where a Contracting Party expropriates or nationalises assets of a company which is incorporated or constituted under the law in force in any part of its territory, and in which investors of the other Contracting Party own shares or other titles of participation, it shall ensure that compensation according to paragraph (1) of this Article will be made available to the persons entitled thereto.

(3) 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 of any third State.

Article 6
Free transfer

Each Contracting Party shall guarantee to investors of the other Contracting Party the transfer without delay in a freely convertible currency of payments in connection with an investment, particularly of:

- (a) returns;
- (b) repayments of loans;
- (c) amounts assigned to cover expenses relating to the management of the
- (d) royalties and other payments deriving from rights enumerated in Article 1 paragraph (2) letters (c), (d) and (e) of this Agreement;
- (e) additional contributions of capital necessary for the maintenance of an investment;
- (f) the proceeds of the sale or of the partial or total liquidation of the investment.

(2) Transfers of currency shall be made at the market rate of exchange prevailing on the date of the transfer.

Article 7
Exceptions

(1) The treatment of the most favoured nation according to Article 4 paragraphs (2) and (3) of this Agreement shall not be construed so as to oblige one Contracting Party to extend to investors of the other the benefit of any treatment, preference or privilege resulting from:

(a) any existing or future free trade agreement, a customs or economic union or a similar regional organisation to which either of the Contracting Parties is or may become a party;

(b) any international agreement or arrangement relating wholly or mainly to taxation.

(2) In relation to domestic tax legislation, while both Contracting Parties recognise the obligation to grant treatment in accordance with Article 4 paragraph (1) of this Agreement, neither of them shall be obliged to apply the principle of national treatment provided for in paragraphs (2) and (3) of the said Article.

Article 8
Principle of subrogation

Where one Contracting Party has granted any financial guarantee against non-commercial risks in regard to an investment by one of its investors in the territory of the other Contracting Party, the latter shall recognise the rights of the first Contracting Party by virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the first 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 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 cannot 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 11

Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

In the event of both Contracting Parties' having become members of, the Convention of Washington of March 18, 1965 on the Settlement of Investment Disputes between States and Nationals of other States, each Contracting Party shall consent to submit any legal dispute that may arise out of investments made by an investor of the other Contracting Party to conciliation or arbitration at the request of such an investor in accordance with the provisions of the said Convention.

Article 12

Entry into Force, Duration and Termination

(1) 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.

(2) In respect of investments covered by this Agreement and made before the date of the termination of the present Agreement the provisions thereof shall continue to be effective for a further period of ten years from that date.

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

Done in duplicate, at Bangkok, on this 11th day of November A.D. 1997, in the English language.

For the Swiss Federal Council
(Prof. Dr. Arnold Koller)
President of the Swiss Confederation

For the Government of the Kingdom of Thailand
(Mr. Chuan Leekpai)
Prime Minister

Protocol

On signing the Agreement between the Swiss Confederation and the Kingdom of Thailand on the Promotion and Reciprocal Protection of Investments, the undersigned plenipotentiaries have, in addition, agreed on the following provisions, which shall be regarded as an integral part of the laid Agreement.

(1) With regard to investors within the meaning of Article 1 paragraph (1) letter (c), a Contracting Party may restrict the application of this Agreement to such investments of investors of the other Contracting Party that are related to economic activities covered by the General Agreement on Trade in Services. On request of either Contracting Party this matter will be reconsidered five years after the entry into force of this Agreement.

(2) With regard to Article 2 paragraph (2) it is understood that for the time being foreign investments in the territory of the Kingdom of Thailand have to be specifically approved in writing by the competent authority in order for the investors to be able to raise a claim under an investment protection agreement. Such approval, which may be dépendent on the fulfilment of certain conditions, may be applied for by Swiss investors at any time in respect of any investment whether made before or after the entry into force of this Agreement.

(3) With regard to Article 4 it is understood that privileges which under the laws of Thailand are granted to investors having the status of a "promoted person" are considered compatible with the principles of national treatment and of the treatment of the most favoured nation if such privileges are based on economic policy considerations rather than the nationality of investors.

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

Done in duplicate, at Bangkok, on this 13th day of November AD. 1997, in the English language.

For the Government of the Kingdom of Thailand

For the Swiss Federal Council

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(Prof. Dr. Arnold Koller)

President of the Swiss Confederation

(Mr. Chuan Leekpai) Prime Minister