

**MODEL AGREEMENT  
BETWEEN  
THE GOVERNMENT OF THE KINGDOM OF THAILAND  
AND  
THE GOVERNMENT OF [ ]  
FOR THE PROMOTION AND PROTECTION OF  
INVESTMENTS  
Preamble**

The Government of the Kingdom of Thailand and the Government of the [ ], hereinafter referred to as the “Contracting Parties”;

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

Recognising that the promotion and the reciprocal protection of investments, guided by the principles of responsible and sustainable investment, will be conducive to the stimulation of individual business initiative and will increase prosperity in both Contracting Parties;

Have agreed as follows:

**Section 1: Definitions and Scope of Application**

**Article 1  
Definitions**

For the purpose of this Agreement:

1. The term “**investment**” shall mean every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of non-speculative gain or profit, and the assumption of risk, in accordance with the laws and regulations of the latter including, in particular, though not exclusively:
  - a) movable and immovable property and any other property rights such as mortgages, liens and pledges;
  - b) shares, stocks and debentures of a company and any other similar forms of participation in a company;
  - c) claims to money and any other rights to performance under contract having an economic value;
  - d) intellectual property and industrial property rights as recognised by the law of the Contracting Party in whose territory the investment is made, know-how, and goodwill;
  - e) business concession, licence, authorisation, and permit conferred pursuant to laws and regulations or contracts including concessions to search for, cultivate, extract, or exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their nature as an investment, provided that such alteration is consistent with the laws and regulations of the Contracting Party in whose territory the investments were made.

2. The term **“investor”** shall mean with regard to either Contracting Party:
  - a) natural persons who, according to the law of that Contracting Party, are considered to be its nationals; and
  - b) juridical persons which are constituted or otherwise duly organised under the law of that Contracting Party and have their seat, together with real economic activities, in the territory of that same Contracting Party, whether for profit or otherwise, and whether privately owned or governmentally-owned, including any incorporation, trust, partnership, joint venture, sole proprietorship, association or similar organisation;
  - c) juridical persons which are 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 natural or juridical persons of that Contracting Party; or
    - (ii) in relation to which natural or juridical persons of that Contracting Party have the power to name a majority of their directors or otherwise legally direct their actions.
3. The term **“returns”** shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties, or fees.
4. The term **“territory”** shall mean, with respect to each Contracting Party, the territory of that Contracting Party including its internal waters, its territorial seas, and any maritime areas over which that Contracting Party has sovereign rights or jurisdiction under international law.
5. The term **“freely usable currency”** shall mean currency 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.

## **Article 2**

### **Scope of Application**

1. This Agreement shall apply only in cases where the investment by investor of one Contracting Party in the territory of the other Contracting Party has been specifically approved in writing for protection, if so required, by the competent authorities of the latter Contracting Party in accordance with the law and regulations of the respective Contracting Parties.
2. Investor of either Contracting Party shall be free to apply for such approval in respect of any investment whether made before or after the entry into force of this Agreement.

3.
  - a. Notwithstanding any other provision of this Agreement, a Contracting Party shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty owed by a financial service supplier, to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Contracting Party's obligations under this Agreement.
  - b. Nothing in this Agreement shall be construed to require a Contracting Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

**[ Option 2:**

**Nothing contained in this Agreement shall apply to measures for prudential reasons adopted by any Contracting Party, with respect to the financial sector, including those measures aimed at protecting investors, depositors, policy holders or persons to whom a fiduciary duty owed by a financial service supplier, or to safeguard the integrity and stability of the financial system. Those measures shall not be used as a means of avoiding the Contracting Party's obligations under this agreement.**

**Option 3**

**Nothing in this Agreement shall affect the rights and obligations of each Contracting Party as a member of the World Trade Organization.]**

**Section 2 Promotion, Treatment and Protection of Investments**

**Article 3: Promotion of investment**

1. Each Contracting Party shall encourage and create favourable conditions in its territory for investments of the investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.
2. The Contracting Parties shall within the framework of their national legislation give sympathetic consideration to applications for the entry and sojourn of nationals of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment; the same shall apply to employed persons of either Contracting Party who in connection with an investment wish to enter the territory of the other Contracting Party and sojourn there to take up employment. Applications for permit shall also be given sympathetic consideration.
3. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures and administrative rulings and judicial decisions of general application as well as international agreements which may affect

the investments of investors of one Contracting Party in the territory of the other Contracting Party.

#### **Article 4**

##### **Post-Establishment National Treatment and Most-Favoured Nations Treatment**

1. Each Contracting Party shall in its territory accord investors or investments and returns of the other Contracting Party, in like circumstances, as regards management, maintenance, use, enjoyment or disposal of their investments, treatment not less favourable than that which it accords to its own investors or investors of any third State, whichever is more favourable, and subject to its laws and regulations.

2. The provisions of paragraph 1 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

- a) any customs union or free trade area or a monetary union or similar international agreements leading to such unions or other forms of regional cooperation to which either of the Contracting Party is or may become a party;
- b) any international agreement or arrangement or any domestic legislation relating wholly or mainly to taxation.

#### **Article 5**

##### **Treatment of Investment**

Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment<sup>1</sup> 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.

#### **Article 6**

##### **Expropriation and Compensation**

1. Investments of investors of either Contracting Party shall not be expropriated, nationalised or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as “expropriation”) in the territory of the other Contracting Party except for public purposes, under due process of law, on a non-discriminatory basis and against prompt, effective and adequate compensation.

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<sup>1</sup> This Article prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of the other Party. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens, and do not create additional substantive rights. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, shall not establish that there has been a breach of this Article.

2. Compensation shall be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or when the expropriation occurred, whichever is the earlier. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier.

3. The compensation shall be fully realizable and shall be paid without any restriction or delay. In the event of delay, it shall carry an appropriate interest, in accordance with the laws and regulations of the Contracting Party making the expropriation from the date the payment was due until the date of actual payment. The payment of such compensation shall be freely transferable in freely usable currency.

4. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.

#### **Article 7** **Free Transfer**

1. Each Contracting Party shall guarantee to the investors of the other Contracting Party, after the fulfillment of fiscal obligations of the investors, the free transfer without delay, in a freely usable currency, of:

- a) capital and additional amounts intended to maintain or increase the investment;
- b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the investment;
- c) proceeds obtained from the total or partial liquidation of the investment;
- d) interest, royalty payments, management fees, and technical assistance and other fees relating to the investment;
- e) payments paid under a contract relating to the investment;
- f) payments arising out of the settlement of a dispute by any means including adjudication, arbitration or the agreement of the parties to the dispute;
- g) funds in repayment of loans relating to the investment;
- h) compensation payable in accordance with Articles 6 (Expropriation and Compensation) and 8 (Compensation for Losses);
- i) the remuneration received by the nationals of the other Contracting Party for work or services done in connection with investments made in its territory, in accordance with its laws and regulations.

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2. The transfers referred to in the preceding paragraph shall be made without delay, at the prevailing market rate of exchange applicable on the date of the transfer in the territory of the other Contracting Party where the investment was made.

3. Notwithstanding paragraph 1 and 2, a Contracting Party may delay or prevent a transfer, through the necessary, equitable, non-discriminatory and good faith application of its laws and regulations relating to:

- (a) the integrity and stability of its currency, external financial position or balance of payments in consistent with the rights and obligations of the Parties as members of the International Monetary Fund (IMF) under the Articles of Agreement of the Fund;
- (b) bankruptcy, insolvency or the protection of the rights of creditors;
- (c) issuing, trading or dealing in securities, futures, options or derivatives;
- (d) criminal or penal offences;
- (e) social security, public retirement or compulsory savings scheme;
- (f) ensuring compliance with the judgments in judicial or administrative proceedings
- (g) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities.

### **Article 8**

#### **Compensation for Losses**

1. Investors of one Contracting Party whose investments 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, riot or other such similar activity in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable to the investors. Resulting payments shall be freely transferable.
2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party, resulting from:
  - b
  - c a) requisitioning of their property by the latter Contracting Party's forces or authorities, or
  - d b) destruction of their property by the latter Contracting Party's forces or authorities, which was not caused in combat action or was not required by the necessity of the situation.

shall be accorded prompt, adequate and effective compensation or restitution. Resulting payments shall be freely transferable.

### **Article 9**

#### **Subrogation**

1. If either Contracting Party or an agency designated by it makes payment to an investor under a policy of insurance against 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 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.

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.

2. 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 expenditures in the territory of the latter Contracting Party.

### **Section 3: Dispute Settlement Mechanism**

#### **Article 10 Settlement of dispute between an investor and a Contracting Party**

1. This Article shall apply to investments disputes between a Party and an investor of the other Party concerning an alleged breach of Article 4 (post-establishment national treatment and most-favoured nations treatment), Article 5 (treatment of investment), Article 6 (expropriation and compensation), Article 7 (free transfer), Article 8 (compensation for losses), and Article 9 (subrogation) which causes loss or damage to the investor in relation to its investment.
2. This Article shall not apply to:
  - a) investment disputes arising out of events which occurred, prior to the entry into force of this Agreement.
  - b) cases the disputing investor holds the nationality of the disputing Party.
3. In the event of a dispute between a Party and an investor of the other Party, consultations and negotiations shall take place between the parties concerned with a view to resolving the case amicably.
4. The disputing parties may at any time agree to good offices, conciliation or mediation. Procedures for good offices, conciliation or mediation may begin at any time and may be terminated at any time.

Such procedures may continue while the matter is being examined by an arbitral tribunal established under this Article, unless the disputing parties agree otherwise.

Proceedings involving good offices, conciliation and mediation and positions taken by the disputing parties during these proceedings shall be confidential and without prejudice to the rights of the disputing investor in any further or other proceedings.
5. If the dispute in question cannot be resolved through consultation and negotiations within a period of six months, the investor may submit the dispute, at the investor's choice, for settlement to:
  - (a) the competent courts or administrative tribunals of the Contracting Party in whose territory the investment was made, provided that such courts or administrative tribunals have jurisdiction or

- (b) an arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) or
- (c) an international arbitral tribunal under the International Centre for Settlement of Investment Disputes provided that both the disputing Party and the Party of the disputing investor are parties to the ICSID Convention or
- (d) a tribunal under the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the disputing investor, but not both, is a party to the ICSID Convention or
- (e) any other arbitral tribunal or institution as agreed by the parties to the dispute.

Once the investor has submitted the dispute to any settlement procedure stated in paragraph 4 (b) to (d) of this Article, the choice of the procedure is final.

No investment dispute may be submitted for settlement under Article 10, if more than three years have elapsed since the date on which the disputing investor acquired or should have first acquired, whichever is the earlier, knowledge of the incurred loss or damage referred to in paragraph 1.

[Note: for paragraph 4, in the negotiation process, both Contracting Parties shall endeavour to agree on one choice of forum.]

- 6. The arbitral tribunal established under this Article shall reach its decision on the basis of national laws and regulations of the Contracting Party, which is a party to the dispute, the provisions of the present Agreement, the interpretation issued by the Joint Committee on Investment under Article 14 (3) (e) as well as applicable rules of international law.
- 7. All arbitral awards shall be final and binding on the parties to the dispute and shall be enforced in accordance with the laws of the Contracting Party.
- 8. All sums received or payable as a result of a settlement shall be freely transferable in a freely usable currency.

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

- 1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, whenever possible, be settled amicably through consultations.
- 2. If a dispute cannot be settled through consultations, it shall, at the request of either Contracting Party, be submitted to an arbitral tribunal for decision.
- 3. An arbitral tribunal shall be constituted for each dispute. Within two months after receipt through diplomatic channels of the request for arbitration, each Contracting Party shall appoint one member to the arbitral tribunal. The two



members shall then select a national of a third State who, upon approval by the two Contracting Parties, shall be appointed Chairman of the arbitral tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members of the 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 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 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 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. The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Unless otherwise agreed, the decision of the arbitral tribunal shall be rendered within six months of the appointment of the Chairman in accordance with paragraphs 3 or 4 of this Article.

6. Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitral proceeding; the costs related to the Chairman and any remaining costs shall be borne equally by the Contracting Parties. The arbitral 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.

#### **Section 4: General Exceptions and Security Exceptions**

##### **Article 12**

##### **General Exceptions**

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties, their investors or their investments where like conditions prevail, or a disguised restriction on investors of any Party or their investments made by investors of any Party, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Party of measures:

- (a) necessary to protect public morals or to maintain public order; [1]
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
  - (i) the prevention of deceptive and fraudulent practices to deal with the effects of a default on a contract;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; and
  - (iii) safety;

- (d) aimed at ensuring the equitable or effective [2] imposition or collection of direct taxes in respect of investments or investors of any Party;
- (e) imposed for the protection of national treasures of artistic, historic or archaeological value; or
- (f) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

2. Insofar as measures affecting the supply of financial services are concerned, paragraph 2 (Domestic Regulation) of the Annex on Financial Services of GATS shall be incorporated into and form an integral part of this Agreement, *mutatis mutandis*.

[1] For the purpose of this sub-paragraph, footnote 5 of Article XIV of the GATS is incorporated into and forms part of this Agreement, *mutatis mutandis*.

[2] For the purpose of this sub-paragraph, footnote 6 of Article XIV of the GATS is incorporated into and forms part of this Agreement, *mutatis mutandis*.

### **Article 13 Security Exceptions**

Nothing in this Agreement shall be construed:

- (a) to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests, including but not limited to:
  - (i) action relating to fissionable and fusionable materials or the materials from which they derived;
  - (ii) action relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
  - (iii) action taken so as to protect critical public infrastructure from deliberate attempts intended to disable or degrade such infrastructure;
  - (iv) action taken in time of war or other emergency in domestic or international relations; or
- (c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

## **Section 4: Institutional mechanism**

### **Article 14 Joint Committee on Investment**

1. For the purposes of the effective implementation and operation of this Agreement, the Contracting Parties hereby establish a **Joint Committee on Investment** ["JCI"] composed of senior representatives of the Contracting Parties.
2. The Joint Committee shall meet whenever necessary. Each Party may request at any time, through a notice in writing to the other Party, that a meeting of the

Joint Committee be held. The request shall provide sufficient information to understand the basis for the request, including, where relevant, identification of issues in dispute. Such a meeting shall take place within 60 days of receipt of the request, unless the Parties agree otherwise.

3. The functions of the Joint Committee shall be to:
  - a. Facilitate the consultation, negotiation, and settlement in case of investment disputes between an investor and a Contracting Party with a view to settling the case amicably;
  - b. Supervise and review the implementation and operation of this Agreement;
  - c. Exchange information on any matters related to this Agreement
  - d. Review case-law of investment arbitration tribunals relevant to the implementation of this Agreement;
  - e. Issue an interpretation of the provisions in this Agreement, which shall be binding on a Tribunal established under Article 10 (Settlement of dispute between an investor and a Contracting Party)
4. The Joint Committee shall establish its rules of procedure.

## **Section 5: Final Provisions**

### **Article 15**

#### **Application of Other Rules**

If the provisions of the law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules whether general or specific entitling investments and returns of investors of the other Contracting Party to treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

### **Article 16**

#### **Amendment**

This Agreement may be amended in writing by mutual consent of the Contracting Parties. Any amendment shall enter into force after each Contracting Party has notified the other Contracting Party in writing that it has completed all internal requirements for the entry into force of such amendment.

### **Article 17**

#### **Entry into force**

Each Contracting Party shall notify the other in writing of the completion of the internal legal procedures required in its territory for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications.

**Article 18**  
**Duration and Termination**

This Agreement shall remain in force indefinitely unless either Contracting Party notifies the other Contracting Party in writing of its intention to terminate it. The termination of this Agreement shall become effective one year after notice of termination has been received by the other Contracting Party. In respect of investments made prior to the date when the termination of this Agreement becomes effective, the provisions of this Agreement shall remain in force for a period of ten years.

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

Done in duplicate at - \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, Year, in the English language.

FOR THE GOVERNMENT OF THAILAND

FOR THE GOVERNMENT OF [ ]

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