Bilateral Investment Treaty between Poland and Thailand

Dezan Shira & Associates is a specialist foreign direct investment practice, providing corporate establishment, business advisory, tax advisory and compliance, accounting, payroll, due diligence and financial review services to multinationals investing in emerging Asia.
AGREEMENT

BETWEEN

THE GOVERNMENT OF THE KINGDOM OF THAILAND

AND

THE GOVERNMENT OF THE REPUBLIC OF POLAND

FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

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

DESIRING to intensify economic cooperation to the mutual benefit of both countries,

INTENDING to create favourable conditions for investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party, and

RECOGNIZING that the encouragement and protection of investments on the basis of this Agreement stimulates business initiative in both fields,

HAVE agreed as follows:
For the purpose of this Agreement,
1. the term "investments" means any kind of assets as recognized by the laws and regulations of the respective Contracting Parties, invested by nationals or companies of one Contracting Party, provided that they have been made in accordance with the law and regulations of the other Contracting Party, and shall include in particular, though not exclusively:

(a) movable and immovable property and any other property rights such as mortgages, liens or pledges,
(b) shares, stocks, bonds, debentures of companies wherever incorporated or interests in the property of such company,
(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, trade names, industrial designs, trade secrets, technical processes, know how and goodwill,
(e) business concessions of financial value necessary for conducting economic activities, conferred by law or under contract including concessions to search for, cultivate, extract or export natural resources:
2. any change in the form of an investment, shall not affect its character as an investment provided that such change has been approved under Article 2;

3. the term "natural" means any natural person who possesses the nationality of either Contracting Party in accordance with the laws in force in the territory of that Contracting Party;

4. the term "company" means 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;

5. the term "territory" means the territory of the Kingdom of Thailand or the territory of the Republic of Poland, as well as any 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;

6. the term "returns" means the amounts yielded by an investment, and in particular, though not exclusively, includes profit, rents, capital gains, dividends, royalties or other income;

7. the term "expropriation" shall also include acts of sovereign power which are tantamount to expropriation, as well as measures of nationalization.
PROMOTION AND PROTECTION OF INVESTMENTS

1. The provisions of this Agreement shall apply only in cases where an investment of capital by the nationals and companies of one Contracting Party in the territory of the other Contracting Party has been specifically approved in writing by the competent authority of the latter Contracting Party.

2. Nationals and companies of either Contracting Party shall be free to apply for such approval in respect of any investment of capital, whether made before or after the entry into force of this Agreement.

3. When such an approval in respect of any investment is applied for, the approval of the Contracting Party shall be free to lay down appropriate conditions.

4. Each Contracting Party shall, having regard to its plans and policies, encourage and facilitate the investments of capital in its territory by the nationals and companies of the other Contracting Party.

5. Investments by nationals or companies of one Contracting Party in the territory of the other Contracting Party shall enjoy the same constant protection and security under the law of the latter Contracting Party.
ARTICLE 3

NATIONAL TREATMENT AND NATIONAL-TREATMENT TREATMENT

1. Investments of nationals or companies 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 nationals and companies of the latter Contracting Party and in any third state.

2. Each Contracting Party shall in its territory accord to nationals or companies of the other Contracting Party as regards the acquisition, 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 nationals and companies or to the nationals and companies of any third state.

3. The provisions on national treatment under this Agreement shall be extended only on a reciprocal basis.

ARTICLE 4

APPLICATION

The provisions of this Agreement relative to the grant of treatment at least as favourable as that accorded to the nationals or companies of either Contracting Party or of
any third State shall be so construed as to oblige one
Contracting Party to accord to the nationals or companies of
the other Contracting Party the benefit of any treatment,
preference or privilege which may be extended by the former
Contracting Party in any of:

(a) any existing or future customs union or a free
trade area or a common external tariff area or a monetary
union or similar international agreement including the
organization for mutual economic assistance or other forms
of regional cooperation which either of the Contracting
Parties is or may become a party;

(b) any international agreement or arrangement
relating wholly or partly to taxation or any domestic
legislation relating wholly or partly to taxation; or

(c) any agreement 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;

(d) the granting to a particular person or company of
the status of a "preferred investor" under the law of Thailand
on the promotion of investment.
ARTICLE 5
APPROPRIATION FOR HOSES

Nationals and companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war, armed conflicts, a state of national emergency, or the territory of the latter Contracting Party shall be accorded, as regards restitution, indemnification, expropriation or other settlement, treatment not less favourable than that which the latter Contracting Party grants to its own nationals and companies or to the nationals and companies of any third state.

ARTICLE 6
EXPROPRIATION

1. In any case, the investments of a national or company of one Contracting Party are subject, directly or indirectly, to any measure of expropriation, the national or company concerned shall be accorded in the territory of the other Contracting Party fair and equitable 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, inter alia, the market value on the day the measure was made; arrived realizable, made without undue delay and accepted, in freely convertible currencies.

2. The date of any expropriation and the amount and method of payment of compensation shall be subject to review by the excess of law.

Each Contracting Party shall guarantee to any national or competitor of the other Contracting Party the free transfer and without undue delay or, in particular:

(a) the capital and the returns accruing from any investment;

(b) the proceeds of the total or partial liquidation of any investment;

(c) refunds and repayment of loans related to an investment;

(d) the remittance part of wages and other remuneration accruing as a national of that other Contracting Party who is permitted to work in connection with an investment in the territory of the former Contracting Party; etc.
(c) any payment owed to a national or company by virtue of Article 19 of this Agreement:

in any freely convertible currency agreed upon between the national or company and the Contracting Party concerned at the exchange rate on the date of transfer.

V. AMENDMENT

1. If a national Party or any agency thereof makes a payment to any national or company under a guarantee or insurance contract, no commercial risks it has contracted in connection with an investment, the other Contracting Party shall recognize the validity of the subrogation in respect of the former Contracting Party or agency thereof to the extent entitled to be held by the national or company. The former Contracting Party or any agency thereof which is subrogated shall have the same rights as those of the national or company up to the extent that they exercise such rights they shall be subject to the obligations of the national or company pertaining to such insured investment.
2. If the former Contracting Party or any agency thereof acquires amounts in the local currency of the other Contracting Party or of a state by virtue of an assignment under paragraph 1 of this Article, such amounts and credits shall be immediately available to the former Contracting Party for the purpose of meeting its expenditure in the territory of the latter Contracting Party.

SECTION 9
SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTY AND THE NATIONAL OR COMPANY OF THE OTHER CONTRACTING PARTY

In case the Contracting Parties are Contracting States to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington D.C. on March 18, 1965, and failing to settle the disputes amicably or by any other form of settlement of disputes, each Contracting Party shall consent to submit any legal dispute that may arise out of investments made by a national or company of the other Contracting Party to conciliation or arbitration at the request of such national or company in accordance with the provisions of the said Convention.
CONSULTATIONS AND EXCHANGE OF INFORMATION

Upon request of either Contracting Party, the other Contracting Party shall agree promptly to consultations or other application of this Agreement.

SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall be settled through consultation or meeting.

2. If no agreement can be reached 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 dispute:

   (a) each Contracting Party shall appoint one member, and these two members shall then select a national of a third State, who shall preside

   (b) the decisions of the tribunal shall be final;
(b) three members shall be appointed within three months and the term within four months, from the date on which a Contracting Party shall have informed the other Contracting Party that it proposes to submit the dispute to a neutral tribunal.

4. If, within a period as 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 notice, 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 member next in seniority on the list of nationals of either Contracting Party 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 next in seniority on the list of nationals of either Contracting Party shall be invited to make the necessary appointments.

5. (a) The neutral Tribunal shall reach its decision by a majority vote. Such decision shall be binding on both Contracting Parties.
(b) Subject to the power of the arbitral tribunal to give a different ruling concerning costs, the cost of its own members or of its representation in the arbitral proceedings shall be borne by each Contracting Party and the cost of the lawyer 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
OTHER INTERNATIONAL AGREEMENTS

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 nationals or companies of the other Contracting Party.

ARTICLE 13
ENTRY INTO FORCE, IRRUPTION AND TERMINATION

1. The provisions of this Agreement shall apply to the rights and obligations of both Contracting Parties with respect to investments made before or after the date of entry into force of this Agreement.
2. This Agreement shall enter into force on the latter date on which either Contracting Party notifies the other Contracting Party in writing that its internal legal requirements for the entry into force of this Agreement have been fulfilled, and shall remain in force for an initial period of ten years. It shall thereafter continue in force indefinitely until either Contracting Party terminates it by twelve months' prior written notice to the other Contracting Party through diplomatic channel. However, with respect to an investment of capital approved while the Agreement is in force, its provisions shall continue to have effect for a period of ten years from the date of such a termination.

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

Done in duplicate at Bangkok, on this 18th day of December A.D. 1992 in the English language.

For the Government of
the Kingdom of Thailand

[Signature]
(H.E. Sqn.Ldr. Prasong Soonsiri)
Minister of Foreign Affairs

For the Government of
the Republic of Poland

[Signature]
(R.W. Mr. Ryszard Michalski)
Deputy Under Secretary of State,
The Ministry of Finance
TRANSLATION

(Seal)

AMBASSADOR
LETTER FROM POLAND
Full powers

By virtue of this letter
Mr. Rybsz, M.C.H.,
Director of the Department of
the Foreign Policy of
the Ministry of Foreign Affairs,
is authorized

to sign on behalf of the government of the Republic of Poland
with the Representatives of the Government of
the Kingdom of Thailand. Under authorized thereto, the Agreement
between the Government of the Kingdom of Thailand and the Government
of the Kingdom of Poland for the Promotion and Protection of
Investments.

In witness whereof, this letter has been delivered.

Done at Warsaw, the twenty-first day of December, A.D. 1992.

(Seal of the Chairman of the Council of Ministers)
CHAIRMAN OF THE COUNCIL OF MINISTERS
(Signature) Hanna Suchocka

MINISTER OF FOREIGN AFFAIRS
(Signature) Rybsz, M.C.H.

AMBACADA
AMBASSADOR FROM POLAND
in Warsaw

AMBASSADOR
W. Rybsz, M.C.H.

Notarization by the consular officer

(Seal)

Za Arapczym
W. Rybsz, M.C.H.