

PRAEH REACH KRAM

No. CS/RKM/0799/04

We

Preahbath Samdech Preah Norodom Sihanouk Reach Harivong Uphatosucheat Visothipong
Akamohaborasratanak Nikarodom Thammikmohareacheathireach Boromaneat Boromabopit Preah Chau Krong
Kampuchea Thipdey

- Referring to the 1993 Constitution of the Kingdom of Cambodia;
- Referring to Reach Kram No. NS/RKM/0399/01 of March 8, 1999 on the Amendment of the Articles 11, 12, 13, 18, 22, 24, 28, 30, 34, 51, 78, 90, 91, and 93 and Articles of Chapters VIII to XIV of the Constitution of the Kingdom of Cambodia;
- Referring to Reach Kret NS/RKT/1198/69 of November 25, 1998 on the Appointment of the Prime Minister of the Royal Government of Cambodia;
- Referring to Reach Kret NS/RKT/1198/72 of November 30, 1998 on the formation of the Royal Government of Cambodia;
- Referring to Reach Kram No. 02/NS/94 of July 20, 1994 promulgating the Law on the Organization and Functioning of the Council of Ministers;
- Referring to Reach Kram No. NS/RKM/0196/18 of January 24, 1996, promulgating the Law on the Establishment of the Ministry of Economy and Finance;
- Pursuant to the Proposals of the Prime Minister and the Senior Minister and Minister of Economy and Finance.

HEREBY PROMULGATE

The Law on the Adoption of the Agreement Between the Government of the Kingdom of Cambodia and the Swiss Confederation on the Promotion and Reciprocal Protection of Investments as ratified by the National Assembly on June 4, 1999 at the second plenary session of the second legislature and as ratified by the Senate as to its entire form and legality on June 23, 1999 at the first plenary session of the first legislature and whose meaning are as follow:

The Law on the Adoption of the Agreement Between the Government of the Kingdom of Cambodia and the
Swiss Confederation on the Promotion and Reciprocal Protection of Investments

Article 1:

It is hereby ratified the Agreement Between the Government of the Kingdom of Cambodia and the Swiss Confederation on the Promotion and Reciprocal Protection of Investments which was signed in Phnom Penh on October 12, 1996 and whose entire text is attached.

Article 2:

The Royal Government of Cambodia shall prepare the procedures to implement this Agreement.

Phnom Penh, July 19, 1999
Acting Head of State Signature
Chea Sim

Has informed to
His Royal Highness for Signature
Prime Minister
Signature
Hun Sen

Has informed to the Prime Minister
Senior Minister and Minister of Economy and Finance.

Keat Chhon

No. 160 CL
for copy

Phnom Penh, August 3, 1999
For Secretary General of the Royal Government

Khon Chin Ken

Agreement Between the Government of the Kingdom of Cambodia
And the Swiss Confederation on the Promotion and Reciprocal Protection of Investments

Preamble

The Government of the Kingdom of Cambodia and the Swiss Federation Council,

Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create and maintain favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both States;

Have agreed as follow:

ARTICLE 1 : DEFINITIONS

For the purposes 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) legal entities which are constituted or duly organized under the law of that Contracting Party and are engaged in substantive business operations in that Contracting Party;
 - (c) legal entities not established under the law of that Contracting Party
 - (i) in which more than 50 per cent of the equity interest is owned by natural persons or legal entities of that Contracting Party; or
 - (ii) in relation to which natural persons or legal entities of that Contracting Party have the power to name a majority of their directors or otherwise legally direct their actions.
2. the term “investments” shall include every kind of asset in particular:
 - a) movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges and usufructs;
 - b) shares, parts or any other kind of participation in companies,
 - c) claims to money or to any performance under contract having economic value,
 - d) copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade marks, indications of origin) know-how and goodwill,
 - (e) concessions under public law, including concessions to search for, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance with the law.
3. the term “returns” means the amounts yielded by an investment and includes, in particular, profits, interest, capital gains, dividends, royalties or fees;
4. the term “territory” includes 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 : SCOPE OF APPLICATION

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.

ARTICLE 3 : PROMOTION, ADMISSION

1. Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.
2. When a Contracting Party shall have admitted an investment on its territory, it shall grant the necessary permits 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, endeavor to issue the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality.

ARTICLE 4: TREATMENT OF INVESTMENT

1. Investments and returns of investors of one 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, use, enjoyment, extension, or disposal of such investments.
2. Each Contracting Party shall in its territory accord investments and returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments and returns of its own investors or to investments and returns of the 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 the 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 a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, a customs union, or a common market, or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accords such advantages to investors of the other Contracting Party.

ARTICLE 5 : FREE TRANSFERS

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant to those investors the free transfer of the amounts relating to these investments, in particular of:
 - (a) returns;
 - (b) funds to repay loans contracted or to meet other contractual obligations;
 - (c) the proceeds of the partial or total sale or liquidation of the investment including possible increment values.
2. In circumstances of exceptional balance of payments difficulties a Contracting Party shall have the right to limit transfers mentioned in paragraph (1), letter (c) of this Article. In such cases transfers shall be allowed in three equal yearly installments.

ARTICLE 6: DISPOSSESSION, COMPENSATION

1. Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalisation or any other measures having the same nature or the same effect against investments of investors of the other Contracting Party, unless the measures are taken in the public interest, on a non discriminatory basis, and under due process of law, and provided that provisions be made for effective and adequate compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriatory action was taken or became public knowledge, whichever is earlier. The amount of compensation, interest included, shall be settled in the currency of

the country of origin of the investment and paid without delay to the person entitled thereto without regard to its residence or domicile.

2. The investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or rebellion, which took place in the territory of the other Contracting Party shall benefit, on the part of this latter, from a treatment in accordance with Article 4 of this Agreement as regards restitution, indemnification, compensation or other settlement.

ARTICLE 7 : 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 recognize 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 8: DISPUTES BETWEEN A CONTRACTING PARTY AND AN INVESTOR OF THE OTHER CONTRACTING PARTY.

1. With a view to an amicable settlement of disputes between a Contracting Party and an investor of the other Contracting Party, consultations will take place between the parties concerned.
2. If these consultations do not result in an amicable settlement within six months from the date of request for consultations, the investor shall be entitled to submit the dispute either to:
 - (a) the International Centre for Settlement of Investment Disputes (ICSID) instituted by the Convention on the Settlement of Investment Disputes between States and nationals of other States, opened for signature at Washington, on 18 March 1965, as soon as the Kingdom of Cambodia becomes a party to this Convention; or to
 - (b) an ad hoc arbitral tribunal which unless otherwise agreed upon by the parties to the dispute shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may also agree on a sole arbitrator.
- (3) The Contracting Party which is party to the dispute shall, at no time whatsoever during the settlement procedure or the execution of the sentence, allege the fact that the investor has received, by virtue of an insurance contract, a compensation covering the whole or part of the incurred damage.
- (4) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other Contracting Party does not abide by and comply with the award rendered by such arbitral tribunal.

ARTICLE 9 : DISPUTES BETWEEN CONTRACTING PARTIES

1. Disputes between Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.
2. If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a national of a third State.
3. If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.
4. If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointments, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.
5. If, in the cases specified under paragraphs (3) and (4) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or is a

national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

6. Subject to other provisions made by the Contracting Parties, the tribunal shall determine its own procedure.
7. The decisions of the tribunal are final and binding for each Contracting Party.

ARTICLE 10 : OTHER COMMITMENTS

1. If provisions in the legislation of either Contracting Party or rules of international law entitle investments by investors of the other Contracting Party to treatment more favorable than is provided for by this Agreement, such provisions shall to the extent that they are more favorable prevail over this Agreement.
2. Each Contracting Party shall observe any obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

ARTICLE 11: FINAL PROVISIONS

1. This Agreement shall enter into force on the day when both Governments have notified each other that they have complied with the legal requirements for the entry into force of international agreements, and shall remain binding for a period of ten years. Unless written notice of termination is given six months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for a period of two years, and so forth.
2. In case of official notice as to the termination of the present Agreement by either Contracting Party, the provisions of Articles 1 to 10 shall continue to be effective for a further period of ten years for investments made before official notice was given.

Done in duplicate, at Phnom Penh this day of October 12, 1996 in Khmer, French and English, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of
the Kingdom of Cambodia

For the Swiss Federal Council