

**December 15, 1987**

**AN AGREEMENT AMONG THE GOVERNMENTS OF BRUNEI  
DARUSSALAM, THE REPUBLIC OF INDONESIA, MALAYSIA, THE  
REPUBLIC OF THE PHILIPPINES, THE REPUBLIC OF SINGAPORE,  
AND THE KINGDOM OF THAILAND FOR THE PROMOTION AND  
PROTECTION OF INVESTMENTS**

The Governments of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore, and the Kingdom of Thailand, hereinafter referred to as the Contracting Parties;

CONSIDERING that the Heads of Government of ASEAN agreed inter alia on industrial cooperation among the member states of ASEAN in the Declaration of ASEAN Concord signed at Denpasar, Bali, on 24 February 1976;

FURTHER CONSIDERING that the Heads of Government of ASEAN in their Meeting in Kuala Lumpur on 4 to 5 August 1977, recognized inter alia that the acceleration of industrialization of the region requires the increased flow of technology and investments, and toward the attainment of this common objective, directed that measures be taken to stimulate the flow of technology, knowhow and private investments among the member states and directed, in particular, the study of a regional mechanism, and the formulation of guidelines, which would facilitate such desired flow of technology, knowhow and private investments;

DESIRING that appropriate measures be taken to carry out the foregoing intents and to create favourable conditions for investments by nationals and companies of any ASEAN member state in the territory of the other ASEAN member states and to facilitate the desired flow of private investments therein to increase prosperity in their respective territories;

RECOGNIZING that an agreement on the promotion and protection of such investments will contribute to the furtherance of the above mentioned purposes;

Have agreed as follows:

**ARTICLE I  
DEFINITION**

For the purpose of this Agreement:

- 1) The term "nationals" shall be as defined in the respective Constitutions and laws of each of the Contracting Parties.
- 2) The term "company" of a Contracting Party shall mean a corporation, partnership or other business association, incorporated or constituted under the laws in force in the territory of any Contracting Party wherein the place of effective management is situated.
- 3) The term "investment" shall mean every kind of asset and in particular shall include, 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 companies or interests in the property of such companies;
  - c) claims to money or to any performance under contract having a financial value;
  - d) intellectual property rights and goodwill;
  - e) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract, or exploit natural resources.
- 4) The term "earnings" shall mean amounts yielded by an investment, particularly, though not exclusively, profits, interest, capital gains, dividends, royalties or fees.
- 5) The term "freely-usable currency" shall mean the United States Dollar, Pound Sterling, Deutschmark, French Franc, Japanese Yen, or any other currency that is widely used to make payments for international transactions and is widely traded in the principal exchange markets.
- 6) The term "host country" shall mean the Contracting Party wherein the investment is made.

## **ARTICLE II**

### **APPLICABILITY OR SCOPE**

- 1) This Agreement shall apply only to investments brought into, derived from or directly connected with investments brought into the territory of any Contracting Party by nationals or companies of any other Contracting Party and which are specifically approved in writing and registered by the host country and upon such conditions as it deems fit for the purposes of this Agreement.
- 2) This Agreement shall not affect the rights and obligations of the Contracting Parties with respect to investments which, under the provisions of paragraph 1 of this Article, do not fall within the scope of the Agreement.
- 3) This Agreement shall also apply to investments made prior to its entry into force, provided such investments are specifically approved in writing and registered by the host country and upon such conditions as it deems fit for purposes of this Agreement subsequent to its entry into force.

## **ARTICLE III**

### **GENERAL OBLIGATIONS**

- 1) Each Contracting Party shall, in a manner consistent with its national objectives, encourage and create favourable conditions in its territory for investments from the other Contracting Parties. All investments to which this Agreement relates shall, subject to this Agreement, be governed by the laws and regulations of the host country, including rules of registration and valuation of such investments.
- 2) Investments of nationals or companies of one Contracting Party in the territory of other Contracting Parties shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the host country.

3) Each Contracting Party shall observe any obligation arising from a particular commitment it may have entered into with regard to specific investment of nationals or companies of the other Contracting Parties.

#### **ARTICLE IV TREATMENT**

1) Each Contracting Party shall, within its territory, ensure full protection of the investments made in accordance with its legislation by investors of the other Contracting Parties and shall not impair by unjustified or discriminatory measures the management, maintenance, use, enjoyment, extension, disposition or liquidation of such investments.

2) All investments made by investors of any Contracting Party shall enjoy fair and equitable treatment in the territory of any other Contracting Party. This treatment shall be no less favourable than that granted to investors of the most-favoured-nation

3) Investors of any Contracting Party who within the territory of another Contracting Party suffer damages in relation to their investment activities in connection with their investments, owing to the outbreak of hostilities or a state of national emergency, shall be accorded treatment no less favourable than that accorded to investors of any third country, as regards restitution, compensation or other valuable consideration. Payments made under this provision shall be effectively realizable and freely transferable, subject to Article VII.

4) Any two or more of the Contracting Parties may negotiate to accord national treatment within the framework of this Agreement. Nothing herein shall entitle any other party to claim national treatment under the most-favoured-nation principle.

#### **ARTICLE V EXCEPTION**

The provisions of this Agreement shall not apply to matters of taxation in the territory of the Contracting Parties. Such matters shall be governed by Avoidance of Double Taxation Treaties between Contracting Parties and the domestic laws of each Contracting Party.

#### **ARTICLE VI EXPROPRIATION AND COMPENSATION**

1) Investments of nationals or companies of any Contracting Party shall not be subject to expropriation or nationalization or any measure equivalent, thereto (in this article referred to as "expropriation"), except for public use, or public purpose, or in the public interest, and under due process of law, on a non-discriminatory basis and upon payment of adequate compensation. Such compensation shall amount to the market value of the investments affected, immediately before the measure of dispossession became public knowledge and it shall be freely transferable in freely-usable currencies from the host country. The compensation shall be settled and paid without unreasonable delay. The national or company affected shall have the right, under the law of the Contracting Party making the expropriation, to prompt review by a judicial body or some other independent authority of that Contracting Party in accordance with principles set out in this paragraph.