Bilateral Investment Treaty between Malaysia and Cambodia

Bilateral Agreements
for the Promotion and Protection of Investments between Cambodia and Malaysia

ARTICLE 1: DEFINITION

1. For the purpose of this Agreement:

(a). "investments' mean every kind of asset and in particular, though not exclusively, includes:

(i) movable and immovable property and any other property rights such as mortgages, hens and pledges;

(ii) shares, stocks and debentures of companies or interests in the property of such companies;

(iii) a claim to money or a claim to any performance having financial value;

(iv) intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, industrial designs, trade secrets, technical processes and know-how and goodwill;

(v) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract, or exploit natural resources;

(b) "returns" means the amount yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties or fees.

(c) "investor" means:

(i) any natural person possessing the citizenship of or permanently residing in a Contracting Party in accordance with its laws; or

(ii) any corporation, partnership, trust, joint-venture, organization, association or . enterprise incorporated or duly constituted in accordance with applicable laws of that Contracting Party;

(d) "territory" means:

(i) with respect to the Kingdom of Cambodia, all land territory, the territorial sea, its bed and subsoil and airspace above.

(ii) with respect to Malaysia, all land territory comprising the Federation of Malaysia, the territorial sea, its bed and subsoil and airspace above;

(e) "freely usable currency" means the United States Dollar, Pound Sterling, Deutschmark, French Franc, Japanese Yen or any other currency that is widely used to make payments for international principal exchange markets.

(i) The term "investments" referred to in paragraph 1 (a) shall only refer to all investments that are made in accordance with the law, regulations and national policies of the Contracting Parties.

(ii) Any alteration of the form in which assets are invested shall not affect their classification as investments, provided that such alteration is not contrary to the approval, if any, granted in respect of the assets originally invested.

ARTICLE 2: PROMOTION AND PROTECTION OF INVESTMENT

1. Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to invest capital in its territory and subject to its rights to exercise powers conferred by its laws, regulations and national policies, shall admit such investments.
2. Investments of investors of either Contracting Party shall at all time be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

ARTICLE 3: FAIR TREATMENT PROVISIONS

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall receive treatment which is fair and equitable in accordance with the laws, regulations and national policies of the -Contracting Parties and not less favorable than that accorded to investments made by investors of any third State.
2. 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 national emergency, revolt, insurrection or riot 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 favorable than that which the latter Contracting, party accords to investors of any third State.
3. The provision of this Agreement relative to the granting of treatment not less favorable than that accorded to the investors of any third State 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 resulting from:

(a) any existing or future customs union or free trade area or a common market or a monetary union or similar international agreement or other forms of regional cooperation to which either of the Contracting Parties is or may become a party; or the adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or

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

ARTICLE 4: EXPROPRIATION

Neither Contracting Party shall take any measures of expropriation, nationalization or any other dispossession, having effect equivalent to nationalization or expropriation against the investments of an investor of the other Contracting Party except under the following conditions:

(a) the measures are taken for a lawful purpose, for public interest, and under due process of law;

(b) the measures are non discriminatory,

(c) the measures are accompanied by provisions for the payment of prompt, adequate, effective, and just compensation. Such compensation shall amount to the market value of the investments affected immediately before the measure of expropriation, nationalization or dispossession became public knowledge. The market value of the investments shall be determined by an independent international appraiser selected and mutually agreed by both Contracting Parties. The compensation proceeds shall be freely transferable in freely usable currencies from the Contracting Party at breach. Any unreasonable delay in payment of compensation shall carry an appropriate interest at commercially reasonable rate as agreed upon by both Contracting Parties or at such rate as prescribed by law of the Contracting Party not at breach.

ARTICLE 5: REPATRIATION OF INVESTMENT

1. Each Contracting Party shall, subject to its laws, regulations and national policies allow without unreasonable delay the transfer of any freely usable currency:

   (a) the net profits, dividends, royalties, technical assistance and technical fees, interest and other current income, accruing from any investment of the investors of the other Contracting Party:

   (b) the proceeds from the total or partial liquidation of any investment made by the investors of the other Contracting Party;

   (c) funds in repayment of borrowings/loans given by investors of one Contracting Party to the investors of the other Contracting Party which both Contracting Parties have recognized as investment; and

   (d) the earnings and other compensation of investors of the other Contracting Party who are employed and- allowed to work in connection with an investment in the territory of the other Contracting Party.

2. The exchange rates applicable to such transfer in the paragraph 1 of this Article shall be the rate of exchange prevailing at the time of remittance.
3. The Contracting Parties undertake to accord to the transfers referred to in paragraph 1 of this Article treatment as favorable as that accorded to the transfer originating from investments made by investors of any third State.

4. Transfers are subject to the right of each Contracting party, in exceptional financial or economic circumstances, to exercise equitably and in good faith powers conferred upon it by its laws and regulations at the time the investment is made as well as new laws and regulations thereafter, provided that no investor shall be put in a less favourable position that at the time of commencement of the investment.

ARTICLE 6: SETTLEMENT OF INVESTMENT DISPUTES BETWEEN A CONTRACTING PARTY AND AN INVESTOR OF THE OTHER CONTRACTING PARTY

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of that other Contracting Party shall be subject to negotiations between the parties in dispute.
2. If any dispute between an investor of one Contracting Party and the other Contracting Party cannot be thus settled within a period of six months, the investor shall be entitled to submit the case either to:

    (a) the International Centre for Settlement of Investment Disputes (ICSID) having regard to the applicable provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on 18 March 1965, in the event both Contracting Parties shall have become a party to this Convention; 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). The Parties to the dispute may agree in writing to modify these Rules. The arbitral awards shall be final and binding on both Parties to the dispute.

3. Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated or a Contracting Party has failed to abide by or comply with the award rendered by the Arbitral Tribunal.

ARTICLE 7: SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.
2. If a dispute between the Contracting Parties cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.
3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the' tribunal. Those 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. The Chairman shall be appointed within two months from the date of appointment of the other two members.
4. If within the period 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 any 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 of if he too is prevented from discharging the said function, the members of the International Court or 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 reach its decision by a majority of votes. Such Decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The 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 Contacting Parties. The tribunal shall determine its own procedure.

ARTICLE 8: SUBROGATION

If a Contracting Party makes a payment to any of its investors under a guarantee it has granted in respect to an investment, the other Contacting Party shall, without prejudice to the rights of the former Contracting Party under Article 6, recognize the transfer of any right or title of such national or company to the former Contracting Party and the subrogation of the former Contracting Party to any right or title.

ARTICLE 9: APPLICATION TO INVESTMENT

This Agreement shall apply to investments made in the territory of either Contracting Party in accordance with its legislation, rules or regulations by investors of the other Contracting Party prior to as well as after the entry into force of this Agreement.

ARTICLE 10: ENTRY INTO FORCE, DURATION AND TERMINATION

1. This Agreement shall enter into force thirty (30) days after the later date on which the Governments of the Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled. The later date shall refer to the date on which the last notification letter is sent.
2. This Agreement shall remain in force for a period of ten (10) years unless terminated in accordance with paragraph 3 of this Article.
3. Either Contracting Party may by giving one (1) year's written notice to the other Contracting Party, terminate this Agreement within the initial ten (10) year period or anytime thereafter.
4. With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of all of the other Articles of this Agreement shall continue to be effective for a period of ten (10) years from such date of termination

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

Done in duplicate at Kuala Lumpur, Malaysia this seventeenth day of August 1994 in Khmer, Bahasa Malaysia and the English Language, all texts being equally authentic. In case of any divergency of interpretation, the English text shall prevail.

FOR THE GOVERNMENT
OF THE KINGDOM
OF CAMBODIA

FOR THE GOVERNMENT
OF MALAYSIA