



# **Bilateral Investment Treaty between Netherlands and Thailand**

**DEZAN SHIRA & ASSOCIATES**

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

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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 on Economic Co-operation between the Government of the Kingdom of the Netherlands and the Government of the Kingdom of Thailand

The Government of the Kingdom of the Netherlands  
and  
the Government of the Kingdom of Thailand,

Desiring to strengthen their traditional ties of friendship, to extend and intensify their economic relations and to encourage investments on the basis of equality and for their mutual benefit,

Have agreed as follows:

## Article I

For the purposes of this Agreement, the term 'nationals' includes:

- (a) a legal person constituted in accordance with the law of either Contracting Party in the territory of that Contracting Party, and
- (b) a legal person constituted in accordance with the law of either Contracting Party in the territory of that Contracting Party, in respect of which, because of its being controlled by a national of the other Contracting Party, permission has been granted or agreement by contract has been reached that it should be treated, for the purposes of the present Agreement, as a national of the latter Contracting Party.

## Article II

- 1) The Contracting Parties undertake to promote mutual co- operation in the economic field.
- 2) Each Contracting Party undertakes, in accordance with its laws and requirements, to facilitate in its territory the participation of nationals of the other Contracting Party in the establishment of productive and commercial activities and the supply of services.

### Article III

- 1) The Contracting Parties shall endeavour to promote and expand commercial relations between their respective countries.
- 2) They shall, within the framework of and subject to their national legislation, further the co-operation between companies, associations and other organisations of any kind or subsidiary bodies thereof, which are connected with the economic life of the two countries, and all their other nationals engaged in economic activities, in order to develop their respective resources.

### Article IV

- 1) Each Contracting Party is prepared, within the limits of its legislation, to facilitate the delivery of capital goods to, or the carrying out of public works for, governmental and private enterprises by its nationals in the territory of the other Contracting Party against payment by instalments.
- 2) In pursuance of transactions entered into under paragraph (1) above, each Contracting Party shall authorize, within the limits of its legislation, the transfer, when due, of money owing to nationals of the other Contracting Party.

### Article V

- 1) With respect to the payment of taxes, fees or charges and to the enjoyment of fiscal deductions and exemptions, each Contracting Party shall accord in its territory to nationals of the other Contracting Party engaged in any economic activity treatment no less favourable than that accorded to nationals of a third country.
- 2) Each Contracting Party however reserves the right to accord special tax advantages by virtue of agreements for the avoidance of double taxation.

### Article VI

Nationals of either Contracting Party shall, as regards the protection of industrial property, enjoy in the territory of the other Contracting Party a protection not less favourable than that enjoyed by its own nationals, without prejudice to the rights provided

by relevant international conventions binding the two Contracting Parties.

## Article VII

- 1) Each Contracting Party shall ensure fair and equitable treatment of the investments, goods, rights and interests of nationals of the other Contracting Party and shall not impair, by unjustified or discriminatory measures, the management, maintenance, use, enjoyment or disposal thereof by them.
- 2) More particularly, each Contracting Party shall accord to such investments, goods, rights and interests the same security and protection as it accords to those of nationals of third states.

## Article VIII

- 1) Each Contracting Party recognizes the principle of the freedom of transfer of the following to the country of nationals of the other Contracting Party and in the currency thereof:
  - the net profits, interests, dividends, royalties and other current income, accruing from any economic activity to nationals of the other Contracting Party;
  - management fees;
  - funds in repayment of loans;
  - funds representing the value of the depreciation of capital assets, necessary to replace those assets in order to safeguard the continuity of the investment concerned;
  - the proceeds of the total or partial liquidation of any investments made by nationals of the other Contracting Party, including increases in or additions to these investments; and
  - a moderate portion of the earnings of nationals of the other Contracting Party who are authorized to work in its territory.
- 2) Subject to prevailing exchange regulations and practices of each Contracting Party which are in conformity with its obligations as a member of the International Monetary Fund, authorization for transfer shall be given and the transfer carried out without undue restriction or delay, within such period of time as is normally required for the completion of transfer formalities.

## Article IX

Neither Contracting Party shall take any measures depriving, directly or indirectly, nationals of the other Contracting Party of their investments, goods, rights or interests, unless the following conditions are complied with:

- (a) the measures are taken for the public benefit and under due process of law;
- (b) the measures are not discriminatory; and
- (c) the measures are accompanied by provision for the payment of just compensation in accordance with international law. Such compensation shall be made, and authorization for transfer shall be given, without undue delay to the country of which the claimants are nationals and in the currency of that country. In case of transfers of large amounts, such transfers may be permitted in reasonable amounts by instalments so as to prevent undue fluctuations of the exchange rates.

## Article X

The Contracting Party in the territory of which an investment approved by it has been made, in respect of which investment the other Contracting Party or a national thereof has granted any financial security against non-commercial risks, recognizes the subrogation of the grantor of that security into the rights of the investor as to damages if payment has been made under the security, and to the extent of that payment.

## Article XI

- 1) The Contracting Parties hereby establish a Joint Commission, composed of representatives appointed by them.
- 2) The Joint Commission shall meet, at the request of one of the Contracting Parties, to discuss any matters pertaining to the implementation of the present Agreement and to consider means of promoting the economic co-operation between the two countries.
- 3) The Joint Commission shall therefore keep under review the development of the economic relations between the two countries, both in bilateral and multilateral contexts. It shall moreover make recommendations to the respective Governments in

cases where the objectives of this Agreement might be furthered and a fuller measure of economic co-operation might be obtained.

## Article XII

- 1) Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement which is not settled in any other way, shall be submitted, at the request of any Party to the dispute to an arbitral tribunal composed of three members. Each Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator who is not a national of either Party.
- 2) If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such appointment, the arbitrator shall be appointed, at the request of the latter Party, by the President of the International Court of Justice.
- 3) If the two arbitrators are unable to reach agreement. in the two months following their appointment, on the choice of the third arbitrator, the latter shall be appointed, at the request of either Party, by the President of the International Court of Justice.
- 4) If, in the cases provided for in the second and third paragraphs of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Party, the Vice-President shall make the necessary appointment. If the Vice-President is prevented from discharging the said function or is a national of either Party, the member of the Court who is next in seniority and is not a national of either Party shall make the necessary appointment.
- 5) The tribunal shall base its decision on the provisions of the present Agreement in conformity with the principles of law. Before the tribunal gives its decision, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably. The foregoing provisions shall not prejudice the power of the arbitral tribunal to decide the dispute *ex aequo et bono* if the Parties so agree.
- 6) Unless the Parties decide otherwise, the tribunal shall determine its own procedure.
- 7) The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties to the dispute.

### Article XIII

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the territory of the Kingdom in Europe, to Surinam and to the Netherlands Antilles.

### Article XIV

- 1) The present Agreement shall be ratified and the instruments of ratification shall be exchanged as soon as possible at The Hague.
- 2) The present Agreement shall enter into force on the 30th day after the date of the exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall, unless notice of termination is given in writing by either Contracting Party one year before its expiry, continue in force thereafter for an unlimited period. After the expiry of the period of ten years the present Agreement may be terminated at any time by either Contracting Party giving one year's notice.
- 3) In respect of investments made prior to the date of termination of the present Agreement, the provisions of Article I to XIII shall continue to be effective for a further period of ten years from the date of termination of the present Agreement.

IN WITNESS WHEREOF, the undersigned representatives, duly authorized thereto, have signed the present Agreement.

DONE at [place] on [date], in duplicate, in the English language.

For the Government of  
the Kingdom of the Netherlands:

For the Government of  
the Kingdom of Thailand:

## Protocol

At the time of signing the Agreement on Economic Co-operation between the Government of the Kingdom of the Netherlands and the Government of the Kingdom of Thailand, the undersigned representatives, duly authorized thereto by their respective Governments, agree that any reference in the said Agreement to most-favoured-nation treatment shall not apply to advantages which either Contracting Party is obliged to grant to nationals of a third state by virtue of an agreement establishing an economic union or of an interim agreement leading to the formation of such a union.

It is also agreed that the present Protocol shall be regarded as an integral part of the said Agreement.

DONE at ..... on ....., in duplicate, in the English language.

For the Government of  
the Kingdom of the Netherlands:

For the Government of  
the Kingdom of Thailand: