

1990 AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE KINGDOM OF THAILAND ON THE CONSTITUTION AND OTHER MATTERS RELATING TO THE ESTABLISHMENT OF THE MALAYSIA-THAILAND JOINT AUTHORITY

Adopted in Kuala Lumpur, Malaysia on 30 May 1990

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THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE KINGDOM OF THAILAND, hereinafter referred to as “the Governments”,

DESIRING to implement the Memorandum of Understanding between Malaysia and the Kingdom of Thailand on the Establishment of a Joint Authority for the Exploitation of the Resources of the Sea-bed in a Defined Area of the Continental Shelf of the Two Countries in the Gulf of Thailand dated 21 February 1979, hereinafter referred to as “the Memorandum of Understanding, 1979”,

HAVE HEREBY AGREED on the establishment of the Malaysia-Thailand Joint Authority, hereinafter referred to as “the Joint Authority”, which shall operate in accordance with the following provisions:

CHAPTER I LEGAL STATUS AND ORGANIZATION

ARTICLE 1 JURISTIC PERSONALITY AND CAPACITY

- (1) The Joint Authority shall have a juristic personality and such capacities as shall be provided for in the Acts of Parliament to be enacted by the Government of Malaysia and the Government of the Kingdom of Thailand, respectively, for the establishment of the Joint Authority, hereinafter referred to as “the Acts”.
- (2) The drafts of the Acts, referred to in paragraph (1) and attached hereto as Appendix A and Appendix B respectively, shall form an integral part of this Agreement.*

ARTICLE 2 PURPOSE

- (1) The purpose of the Joint Authority shall be the exploration and exploitation of the non-living natural resources of the sea-bed and subsoil, in particular petroleum, in the Joint Development Area as defined in the Memorandum of Understanding, 1979 for the period of validity of the Memorandum of Understanding, 1979.
- (2) In this Agreement, “petroleum” means any mineral oil or relative hydrocarbon and natural gas existing in its natural condition and casinghead petroleum spirit, including bituminous shales and other stratified deposits from which oil can be extracted.

ARTICLE 3 MEMBERSHIP

- (1) The Joint Authority shall comprise
 - (a) two Co-Chairmen, one each to be appointed by the respective Governments; and

- (b) an equal number of members to be appointed by each Government, provided that the initial number of members, excluding the Co-Chairmen, to be appointed by each Government shall be six.
- (2) The word “member” shall, for the purposes of this Agreement, and unless the context otherwise requires, include a Co-Chairman.

ARTICLE 4 PROCEDURE

- (1) The Co-Chairmen shall alternate to perform the functions of a Chairman at meetings of the Joint Authority. In the absence of a Co-Chairman during his chairmanship, the members of the Joint Authority shall elect a Chairman from amongst the members representing the same Government as the corresponding Co-Chairman. When so elected, he shall have all the powers of the Chairman.
- (2) The quorum for any meeting of the Joint Authority shall not be less than ten. Decisions shall be taken jointly at a meeting by the Co-Chairmen.

ARTICLE 5 PERSONAL LIABILITY

No member of the Joint Authority shall incur any personal liability for any loss or damage caused by any act or omission in the administration of the affairs of the Joint Authority unless such loss or damage is occasioned by a wrongful act, gross negligence or omission on his part.

ARTICLE 6 EMOLUMENTS

The members of the Joint Authority shall be paid such emoluments and other allowances as the Joint Authority may determine with the approval of the Governments.

CHAPTER II POWERS AND FUNCTIONS

ARTICLE 7 POWERS AND FUNCTIONS

- (1) The Joint Authority shall control all exploration and exploitation of the non-living natural resources in the Joint Development Area and shall be responsible for the formulation of policies for the same.
- (2) Without prejudice to the generality of the foregoing, the powers and functions of the Joint Authority shall include the following:
 - (a) to decide, with the approval of the Governments, on the organizational structure of the Joint Authority;
 - (b) subject to subparagraph (a), to appoint the chief executive officer and other officers of the Joint Authority, provided that the appointment of the chief executive officer and the deputy chief executive officer shall require the approval of the Governments;
 - (c) to decide on the terms and conditions of service of the chief executive officer and other officers of the Joint Authority;
 - (d) to decide on the plan of operation and the working programme for the administration of the Joint Development Area;

- (e) to permit operations and to conclude transactions or contracts for or relating to the exploration and exploitation of the non-living natural resources in the Joint Development Area subject to the approval of the Governments;
- (f) in respect of any contract referred to in subparagraph (e) for the exploration and exploitation of petroleum
 - (i) to approve and extend the period of exploration and exploitation;
 - (ii) to approve the work programmes and budgets of the contractor; and
 - (iii) to approve the production programmes of the contractor, including the production costs, conditions and schedules of the production;
- (g) in respect of an operator of any contract referred to in subparagraph (f)
 - (i) to inspect and audit the operator's books and accounts relating to its operations in the Joint Development Area;
 - (ii) (ii) to take periodic inventories of the properties and assets procured by the operator for petroleum operations; and
 - (iii) to receive, collate and store all data supplied by the operator relating to its operations in the Joint Development Area;
- (h) to approve and award tenders and contracts relating to goods and services required in carrying out petroleum operations in the Joint Development Area;
- (i) to appoint committees, sub-committees or independent experts and consultants where necessary for the administration of the Joint Authority;
- (j) to regulate any meeting of the Joint Authority, any committee and sub-committee thereof; and
- (k) to do any other thing incidental to or necessary for the performance of any of its functions.

ARTICLE 8 PRODUCTION SHARING

- (1) For the purpose of paragraph (2)(f) of Article 7, any contract awarded to any person for the exploration and exploitation of petroleum in the Joint Development Area shall, in accordance with subsection (3) of section 14 of the Acts, be a production sharing contract.
- (2) A production sharing contract referred to in paragraph (1) shall include, without prejudice to paragraph (3), the terms and conditions specified in subsection (3) of section 14 of the Acts as follows:
 - (a) the contract shall be valid for a period not exceeding thirty-five years but shall not exceed the period of validity of this Agreement;
 - (b) payment in the amount of ten per centum of gross production of petroleum by the contractor to the Joint Authority as royalty in the manner and at such times as may be specified in the contract;

- (c) fifty per centum of gross production of petroleum shall be applied by the contractor for the purpose of recovery of costs for petroleum operations;
 - (d) the remaining portion of gross production of petroleum, after deductions for the purposes of subparagraphs (b) and (c), shall be deemed to be profit petroleum and be divided equally between the Joint Authority and the contractor;
 - (e) all costs of petroleum operations shall be borne by the contractor and shall, subject to subparagraph (c), be recoverable from production;
 - (f) a minimum amount that the contractor shall expend on petroleum operations under the contract as a minimum commitment as may be agreed to by the Joint Authority and the contractor;
 - (g) payment of a research cess [sic] by the contractor to the Joint Authority in the amount of one half of one per centum of the aggregate of that portion of gross production which is applied for the purpose of recovery of costs under subparagraph (c) and the contractor's share of profit petroleum under subparagraph (d) in the manner and at such times as may be determined by the Joint Authority, provided that such payment shall not be recoverable from production; and
 - (h) any disputes or differences arising out of or in connection with the contract which cannot be amicably settled shall be referred to arbitration before a panel consisting of three arbitrators, one arbitrator to be appointed by each party, and a third to be jointly appointed by both parties. If the parties are unable to concur on the choice of a third arbitrator within a specified period, the third arbitrator shall be appointed upon application to be United Nations Commission of International Trade Law (UNCITRAL). The arbitration proceedings shall be conducted in accordance with the rules of UNCITRAL. The venue or arbitration shall be either Bangkok or Kuala Lumpur, or any other place as may be agreed to by the parties.
- (3) In addition to the matters specified in paragraph (2), production sharing contract may, at the option of the Joint Authority, include the following:
- (a) the period referred to under subparagraph (a) of paragraph (2) shall be applied as follows:
 - (i) in respect of a contract for petroleum (other than gas), the periods for the purposes of exploration, development and production shall not exceed five years, five years and twenty-five years, respectively; and
 - (ii) in respect of a contract for gas, the periods for the purposes of exploration, the identification and nomination of the gas market, development and production shall not exceed, in respect of the first three periods, five years each, and in respect of the fourth period, twenty years:

Provided that any period referred to in subparagraphs (a)(i) and (a)(ii) may be varied by the Joint Authority from time to time as may be necessary on condition that where any such variation affects a subsisting contract it shall only be made with the agreement of the contractor:

Provided further that where the first commercial production occurs, in the case of

- (A) petroleum (other than gas), before the expiry of the development period, the balance of that development period shall be added to the production period; and
 - (B) gas, before the expiry of the period for the identification and nomination of the gas market or the development period, the balance of either of those periods shall be added to the production period;
 - (b) title to any equipment or assets purchased or acquired by the contractor for the purpose of petroleum operations shall pass to the Joint Authority upon such purchase or acquisition;
 - (c) the Joint Authority shall have title to all original data (raw, processed or interpreted) resulting from petroleum operations, including but not limited to geological, geophysical, core samples, petro-physical, well completion reports, engineering and other data reports and actual samples as the contractor may collect and compile; and
 - (d) the contractor shall purchase or acquire equipment, facilities, goods, materials, supplies, including services and research facilities, professional or otherwise, from sources in Malaysia or the Kingdom of Thailand where technically and economically feasible.
- (4) The Joint Authority may vary any of the amounts referred to in subparagraphs (c), (d) and (g) of paragraph (2) in respect of any contract with the approval of the Governments:

Provided that there shall be no variation of any of these amounts in respect of a subsisting contract without the agreement of the contractor.

- (5) For the purpose of this Article –
- (a) “first commercial production” in relation to petroleum (other than gas) means the date that production has continued for a period of twenty-four hours following completion of testing from the first production well, and, in relation to gas, means the date within the first sixty days on which a cumulative 106 Giga Joule (approximately 947 billion BTU) of gas is first sold or, the sixtieth day after the gas is first sold if the cumulative sale within the first sixty days does not exceed 106 Giga Joule; and
 - (b) “gross production” with reference to gas means gross proceeds of sale of gas.
- (6) The contractor shall pay export duty on its share of profit oil and petroleum income tax in accordance with Article 16 and Article 17 of this Agreement, respectively.

CHAPTER III FINANCIAL PROVISIONS

ARTICLE 9 FINANCE

- (1) All costs incurred and benefits derived by the Joint Authority from activities carried out in the Joint Development Area shall be equally borne and shared by the Governments.
- (2) Until such time as the Joint Authority shall have sufficient income to finance its annual operational expenditure, the Governments shall annually provide the Joint Authority with the agreed amounts of money in equal shares to be paid into the Malaysia-Thailand Joint Authority Fund, hereinafter referred to as “the Fund”.

- (3) Thereupon, as specified in paragraph (2), and unless otherwise decided by the Governments, all such annual government contributions shall cease.

ARTICLE 10 ACCOUNTS AND RECORDS

- (1) The Joint Authority shall cause proper accounts and other records of its transactions and affairs to be kept in accordance with generally accepted accounting principles and shall do all things necessary to ensure that all incomes are properly accounted for all that all expenditures out of the Fund including payments of salaries, remuneration and other monetary benefits to members of the Joint Authority and its employees, are properly authorized and that adequate control is maintained over the assets of or in the custody of the Joint Authority.
- (2) Either Government may at any time direct any account or records to be made available to it and the Joint Authority shall comply with such direction.

ARTICLE 11 BUDGET

The annual budget of the Joint Authority shall be submitted to the Governments well in advance before the financial year of the respective Governments for their approval.

ARTICLE 12 AUDIT

- (1) The Joint Authority shall have a financial year beginning on the first day of January.
- (2) The accounts of the Joint Authority shall be audited annually by an auditor appointed by the Joint Authority with the approval of the Governments.
- (3) The Joint Authority shall, within six months after the end of each financial year, have its accounts audited and transmitted to both Governments together with a copy of any observations made by the auditor on any statement or on the accounts of the Joint Authority and a copy of the annual report dealing with the activities of the Joint Authority in the preceding year.

CHAPTER IV REGULATIONS AND RELATIONS WITH OTHER ORGANIZATIONS

ARTICLE 13 REGULATIONS

The Joint Authority may, in accordance with and for the purpose of section 15 of the Acts, submit recommendations on regulations in respect of any matter falling thereunder to the Governments for consideration.

ARTICLE 14 RELATIONS WITH OTHER ORGANIZATIONS

In order to fulfill its purpose, the Joint Authority may cooperate with any government or organization, and, to this end, may, subject to the approval of the Governments, conclude any agreement or arrangement with such government or organization.

CHAPTER V THE ACTS

ARTICLE 15 AMENDMENT OF THE ACTS

In order to facilitate the efficient management and operation of this Agreement, the Governments agree that the Acts shall not be amended without prior agreement between the Governments.

CHAPTER VI CUSTOMS AND EXCISE, AND TAXATION

ARTICLE 16 CUSTOMS MATTERS

(1) For the purpose of Part X of the Acts

(a) the rate of export duty payable by the contractor in respect of the contractor's share of profit oil sold outside Malaysia and the Kingdom of Thailand shall be ten per centum subject to the provision of subparagraph (b)(ii);

(b) the Customs and Excise Authorities shall continue to exercise all powers in relation to all matters relating to the regulation of the movement of goods imported into or exported from the Joint Development Area in accordance with the existing legislation of Malaysia or the Kingdom of Thailand, as the case may be, subject to the following:

(i) customs approved goods, equipment and materials for use in the Joint Development area shall be accorded duty exemption if they are imported by the Joint Authority or any person authorized by it:

Provided that where one of the Governments proposes to impose any duties or taxes on any such customs approved goods, equipment and materials, it may impose such duties or taxes after consultation with the other Government;

(ii) Malaysia and the Kingdom of Thailand shall collect their respective duties and taxes collectible under their respective legislation but shall reduce the applicable rates by fifty per centum;

(iii) any goods entering the Joint Development Area from:

(A) a third country, any licensed warehouse or bonded area of either Malaysia or the Kingdom of Thailand shall be deemed an import; and

(B) Malaysia or the Kingdom of Thailand, shall be deemed an internal movement, provided they are customs approved goods, equipment and materials for use in the Joint Development Area;

(iv) any goods produced in the Joint Development Area entering Malaysia or the Kingdom of Thailand or a third country shall be deemed an export;

(v) any goods which has entered the Joint Development Area under the situation described in subparagraph (b)(iii)(B) and is to be moved into Malaysia or the Kingdom of Thailand shall be subject to the laws of Malaysia or the Kingdom of Thailand, as the case may be;

- (vi) any goods falling within the category of goods appearing in both the lists of prohibited goods made in accordance with the laws of Malaysia and the Kingdom of Thailand, respectively, shall not be permitted to be brought into the Joint Development Area:

Provided that where an exception is required in respect of any specific importation, such an exception may be made with the agreement of the competent authorities of the other Country;

- (vii) proceeds from any sale of forfeited goods which are the produce of the Joint Development Area shall be equally shared by Malaysia and the Kingdom of Thailand;
 - (c) the Customs and Excise Authorities shall use common customs forms for the purposes of import, export and internal movement of goods in the Joint Development Area as specified in subparagraphs (b)(iii) and (iv); and
 - (d) the Country where the headquarters of the Joint Authority is located shall empower the officers of the Customs and Excise Authority of the other Country to exercise their authority with regard to customs clearance, including the collection of duties and taxes, within the premises of the Joint Customs Office.
- (2) Notwithstanding section 18 of the Acts, and insofar as it applies to customs and excise matters, the following arrangements shall apply:
- (a) where an act is committed in the Joint Development Area and that act is an offence under the laws of one of the Countries only, such Country whose laws are alleged to have been breached may assume jurisdiction over such alleged offence;
 - (b) where the act referred to in subparagraph (a) is an offence under the laws of the Countries, the Country which may assume jurisdiction over the act shall be that whose officer first makes an arrest or seizure in respect of the alleged offence; and
 - (c) where the act referred to in subparagraph (a) is an offence under the laws of the Countries and in respect of which there are simultaneous arrests or seizures by the Customs and Excise Authorities, the jurisdiction over the alleged offence shall be determined through consultation between such Authorities.

- (3) For the purpose of this Article –

- (a) “Countries” means Malaysia and the Kingdom of Thailand, and when used in the singular means Malaysia or the Kingdom of Thailand, as the context requires;
- (b) “customs approved goods” means goods in respect of which customs duties are exempted under both the laws of Malaysia and the Kingdom of Thailand relating to customs;
- (c) “Customs and Excise Authority” in relation to Malaysia means the Royal Customs and Excise, Malaysia and in relation to the Kingdom of Thailand means the Customs Department of Thailand, and when used in the plural means both such Authorities;
- (d) “Joint Customs Committee” means the committee comprising officers of the Customs and Excise Authorities established for the purpose of the coordination of the administration of customs and excise laws in the Joint Development Area; and

- (e) "Joint Customs Office" means the office of the Joint Customs Committee established in the headquarters of the Joint Authority for the purpose of the coordination of the administration of the customs and excise laws in the Joint Development Area.

ARTICLE 17 TAXATION

- (1) For the purpose of Part X of the Acts, the Revenue Authorities of the Governments shall, subject to the following, continue to impose and collect taxes in respect of income from the Joint Development Area in accordance with the existing tax legislation of Malaysia and the Kingdom of Thailand, as the case may be:

- (a) the taxation of such income of any person who holds the right to explore and exploit any petroleum in the Joint Development Area under a contract awarded by the Joint Authority shall be in accordance with the following rates:

First 8 years of production	0% of taxable income
Next 7 years	10% of taxable income
Subsequent years	20% of taxable income:

Provided that the tax chargeable by each of the Governments shall be reduced to fifty per centum of the amount so chargeable:

Provided further that where the tax chargeable for each year by one of the Governments exceeds that chargeable by the other Government, such excess shall be shared equally by the two Governments and shall be effected by the Joint Authority through appropriate adjustments of payments made under paragraph (d) of section 10 of the Acts;

- (b) the taxation of such income of a person who is a Malaysian or Thai national exercising employment in the Joint Development Area or with the Joint Authority shall be based on his residence; and
- (c) the taxation of such income of any person other than a person mentioned in subparagraphs (a) and (b) shall be in accordance with the laws and regulations of Malaysia and the Kingdom of Thailand, provided that where the same income is subject to tax in both countries, the tax chargeable in each country shall be reduced by fifty per centum of the amount so chargeable.
- (2) The Governments agree that any law for taxation which is in the nature of general sales tax, including any tax imposed on the provision of goods and services in the Joint Development Area, shall not be applicable to the Joint Development Area.
- (3) The Joint Authority shall be exempt from taxation in Malaysia and the Kingdom of Thailand.
- (4) The Revenue Authorities of the Governments shall continue to communicate with and consult each other in respect of the implementation and administration of any tax law in the Joint Development Area.

CHAPTER VII MISCELLANEOUS AND PROVISIONS

ARTICLE 18 ENTRY INTO FORCE AND TERMINATION

- (1) The Agreement shall enter into force upon the exchange of instruments of ratification, and, unless otherwise agreed to by the Governments, shall remain in force for the period of validity of the Memorandum of Understanding, 1979.
- (2) Upon termination of this Agreement, the Joint Authority shall be wound up in accordance with a liquidation procedure as may be approved by the Governments.

ARTICLE 19 APPLICATION

The application and interpretation of the provisions of this Agreement shall be consistent with the spirit and provisions of the Memorandum of Understanding, 1979.

ARTICLE 20 AMENDMENT

This Agreement may be amended by a joint decision of the Co-Chairman with the approval of the Governments.

ARTICLE 21 SETTLEMENT OF DISPUTES

Any differences or disputes arising out of the interpretation or application of the provisions of this Agreement shall be settled peacefully by consultation or negotiation between the Governments. In the event that no settlement is reached within a period of three months either Government may refer the matter to the Prime Minister of Malaysia and the Prime Minister of the Kingdom of Thailand who shall jointly decide on the mode of settlement for the purpose of the particular matter referred to them.

ARTICLE 22

This Agreement is made in duplicate at Kuala Lumpur, Malaysia, on the Thirtieth day of May, in the year One thousand Nine hundred and Ninety, in the English Language.

For the Government of Malaysia: **DATO' HAJI ABU HASSAN BIN HAJI OMAR**, Minister of Foreign Affairs

For the Government of the Kingdom of Thailand: **AIR CHIEF MARSHAL SIDDHI SAVETSILA**, Minister of Foreign Affairs