

# PREAH REACH KRAM

No. NS/RKM/0699/04

We

**Preahbath Samdech Preah Norodom Sihanouk Reach Harivong Uphatosucheat  
Visothipong Akamohaborasratanak Nikarodom Thammikmohareacheathreach  
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 Approval of the Membership of the Kingdom of Cambodia to the Multilateral Investment Guarantee Agency as ratified by the National Assembly on May 17, 1999 at the second plenary session of the second legislature and as ratified by the Senate as to its entire form and legality on May 21, 1999 at the first plenary session of the first legislature and whose meaning are as follow:

Article 1:

It is hereby ratified the Convention Establishing the Multilateral Investment Guarantee Agency whose entire text is attached and adopted the membership of the Kingdom of Cambodia to the Multilateral Investment Guarantee Agency.

Article 2:

The Royal Government of Cambodia to subscribe shares of the Multilateral Investment Guarantee Agency for the amount of Nine Hundred Thirty Thousand (930,000) SDR pursuant to the procedures stipulated in the Convention establishing the Agency.

Article 3:

The Royal Government of Cambodia shall prepare all the necessary procedures to complete the membership of the Kingdom of Cambodia to the Multilateral Investment Guarantee Agency.

Article 4:

This law shall be declared as urgent.  
Phnom Penh, June 17, 1999

**His Royal Signature**  
**Norodom Sihanouk**  
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. 126 CL  
for copy

## Convention Establishing the Multilateral Investment Guarantee Agency

### PREAMBLE

#### *The Contracting States*

Considering the need to strengthen international cooperation for economic development and to foster the contribution to such development of foreign investment in general and private foreign investment in particular;

Recognizing that the flow of foreign investment to developing countries would be facilitated and further encouraged by alleviating concerns related to non-commercial risks;

Desiring to enhance the flow to developing countries of capital and technology for productive purposes under conditions consistent with their development needs, policies and objectives, on the basis of fair and stable standards for the treatment of foreign investment;

Convinced that the Multilateral Investment Guarantee Agency can play an important role in the encouragement of foreign investment complementing national and regional investment guarantee programs and private insurers of non-commercial risk; and

Realizing that such Agency should, to the extent possible, meet its obligations without resort to its callable capital and that such an objective would be served by continued improvement in investment conditions,

Have Agreed as follows:

## CHAPTER I Establishment, Status, Purposes and Definitions

### CHAPTER I

#### *Establishment, Status, Purposes and Definitions*

#### Article 1: Establishment and Status of the Agency

- (a) There is hereby established the Multilateral Investment Guarantee Agency (hereinafter called the Agency).
- (b) The Agency shall possess full juridical personality and, in particular, the capacity to:
  - (i) contract;
  - (ii) acquire and dispose of movable and immovable property; and
  - (iii) institute legal proceedings.

#### Article 2<sup>o</sup> Objective and Purposes

The objective of the Agency shall be to encourage the flow of investments for productive purposes among member countries, and in particular to develop member countries, thus supplementing the activities of the International Bank for Reconstruction and Development (hereinafter referred to as the Bank), the International Finance Corporation and other international development finance institutions.

To serve its objective, the Agency shall:

- (a) issue guarantees, including coinsurance and reinsurance, against non-commercial risks in respect of investments in a member country which flow from other member countries;
- (b) carry out appropriate complementary activities to promote the flow of investments to and among developing member countries; and
- (c) exercise such other incidental powers as shall be necessary or desirable in the furtherance of its objective.

The Agency shall be guided in all its decisions by the provisions of this Article.

#### Article 3: Definitions

For the purposes of this Convention:

- (a) "Member" means a State with respect to which this Convention has entered into force in accordance with Article 61.
- (b) "Host country" or "host government" means a member, its government, or any public authority of a member in whose territories, as defined in Article 66, an investment which has been guaranteed or reinsured, or is considered for guarantee or reinsurance, by the Agency is to be located.
- (c) A "developing member country" means a member which is listed as such in Schedule A hereto as this Schedule may be amended from time to time by the Council of Governors referred to in Article

30 (hereinafter called the Council).

(d) A "special majority" means an affirmative vote of not less than two-thirds of the total voting power representing not less than fifty-five percent of the subscribed shares of the capital stock of the Agency.

(e) A "freely usable currency" means (i) any currency designated as such by the International Monetary Fund from time to time and (ii) any other freely available and effectively usable currency which the Board of Directors referred to in Article 30 (hereinafter called the Board) may designate for the purposes of this Convention after consultation with the International Monetary Fund and with the approval of the country of such currency.

## CHAPTER II Membership and Capital

### CHAPTER II *Membership and Capital*

#### Article 4: Membership

(a) Membership in the Agency shall be open to all members of the Bank and to Switzerland.

(b) Original member shall be the States which are listed in Schedule A hereto and become parties to this Convention on or before October 30, 1987.

#### Article 5<sup>o</sup> Capital

(a) The authorized capital stock of the Agency shall be one billion Special Drawing Rights (SDR 1,000,000,000). The capital stock shall be divided into 100,000 shares having a par value of SDR 10,000 each, which shall be available for subscription by members. All payment obligations of members with respect to capital stock shall be settled on the basis of the average value of the SDR in terms of United States dollars for the period January 1, 1981 to June 30, 1985, such value being 1.082 United States dollars per SDR.

(b) The capital stock shall increase on the admission of a new member to the extent that the then authorized shares are insufficient to provide the shares to be subscribed by such member pursuant to Article 6.

(c) The Council, by special majority, may at any time increase the capital stock of the Agency.

#### Article 6: Subscription of Shares

Each original member of the Agency shall subscribe at par to the number of shares of capital stock set forth opposite its name in Schedule A hereto. Each other member shall subscribe to such number of shares of capital stock on such terms and conditions as may be determined by the Council, but in not event at an issue price of less than par. No member shall subscribe to less than fifty shares. The Council may prescribe rules by which members may subscribe to additional shares of the authorized capital stock.

#### Article 7: Division and Calls of Subscribed Capital

The initial subscription of each member shall be paid as follows:

(i) Within ninety days from the date on which this Convention enters into force with respect to such member, ten percent of the price of each share shall be paid in cash as stipulated in Section (a) of Article 8 and an additional ten percent in the form of non-negotiable, non-interest-bearing promissory notes or similar obligations to be encashed pursuant to a decision of the Board in order to meet the Agency's obligations.

(ii) The remainder shall be subject to call by the Agency when required to meet its obligations.

#### Article 8: Payment of Subscription of Shares

(a) Payments of subscriptions shall be made in freely usable currencies except that payments by developing member countries may be made in their own currencies up to twenty-five percent of the paid-in cash portion of their subscriptions payable under Article 7 (i).

(b) Calls on any portion of unpaid subscriptions shall be uniform on all shares.

(c) If the amount received by the Agency on a call shall be insufficient to meet the obligations which

have necessitated the call, the Agency may make further successive calls on unpaid subscriptions until the aggregate amount received by it shall be sufficient to meet such obligations.

(d) Liability on shares shall be limited to the unpaid portion of the issue price.

## Article 9: Valuation of Currencies

Whenever it shall be necessary for the purposes of this Convention to determine the value of one currency in terms of another, such value shall be as reasonably determined by the Agency, after consultation with the International Monetary Fund.

## Article 10: Refunds

(a) The Agency shall, as soon as practicable, return to members amounts paid on calls on subscribed capital if and to the extent that:

(i) the call shall have been made to pay a claim resulting from a guarantee or reinsurance contract and thereafter the Agency shall have recovered its payment, in whole or in part, in a freely usable currency; or

(ii) the call shall have been made because of a default in payment by a member and thereafter such member shall have made good such default in whole or in part; or

(iii) the Council, by special majority, determines that the financial position of the Agency permits all or part of such amounts to be returned out of the Agency's revenues.

(b) Any refund effected under this Article to a member shall be made in freely usable currency in the proportion of the payments made by that member to the total amount paid pursuant to calls made prior to such refund.

(c) The equivalent of amounts refunded under this Article to a member shall become part of the callable capital obligations of the member under Article 7 (ii).

# CHAPTER III Operations

## CHAPTER III

### *Operations*

## Article 11: Covered Risks

(a) Subject to the provisions of Sections (b) and (c) below, the Agency may guarantee eligible investments against a loss resulting from one or more of the following types of risk:

(i) Currency Transfer

any introduction attributable to the host government of restrictions on the transfer outside the host country of its currency into a freely usable currency or another currency acceptable to the holder of the guarantee, including a failure of the host government to act within a reasonable period of time on an application by such holder for such transfer;

(ii) Expropriation and Similar Measures

any legislative action or administrative action or omission attributable to the host government which has the effect of depriving the holder of a guarantee of his ownership or control of, or a substantial benefit from, his investment, with the exception of non-discriminatory measures of general application which the governments normally take for the purpose of regulating economic activity in their territories;

(iii) Breach of Contract

any repudiation or breach by the host government of a contract with the holder of a guarantee, when (a) the holder of a guarantee does not have recourse to a judicial or arbitral forum to determine the claim of repudiation or breach, or (b) a decision by such forum is not rendered within such reasonable period of time as shall be prescribed in the contracts of guarantee pursuant to the Agency's regulations, or (c) such a decision cannot be enforced; and

(iv) War and Civil Disturbance

any military action or civil disturbance in any territory of the host country to which this Convention shall be applicable as provided in Article 66.

(b) Upon the joint application of the investor and the host country, the Board, by special majority, may approve the extension of coverage under this Article to specific non-commercial risks other than those referred to in Section (a) above, but in no case to the risk of devaluation or depreciation of currency.

(c) Losses resulting from the following shall not be covered:

(i) any host government action or omission to which the holder of the guarantee has agreed or for



which he has been responsible; and

(ii) any host government action or omission or any other event occurring before the conclusion of the contract of guarantee.

## Article 12: Eligible Investments

(a) Eligible investments shall include equity interest, including medium- or long-term loans made or guaranteed by holders of equity in the enterprise concerned, and such forms of direct investment as may be determined by the Board.

(b) The Board, by special majority, may extend eligibility to any other medium- or long-term form of investment, except that loans other than those mentioned in Section (a) above may be eligible only if they are related to a specific investment covered or to be covered by the Agency.

(c) Guarantees shall be restricted to investments the implementation of which begins subsequent to the registration of the application for the guarantee by the Agency. Such investments may include:

(i) any transfer of foreign exchange made to modernize, expand, or develop an existing investment; and

(ii) the use of earnings from existing investments which could otherwise be transferred outside the host country.

(d) In guaranteeing an investment, the Agency shall satisfy itself as to:

(i) the economic soundness of the investment and its contribution to the development of the host country;

(ii) compliance of the investment with the host country's laws and regulations;

(iii) consistency of the investment with the declared development objectives and priorities of the host country; and

(iv) the investment conditions in the host country, including the availability of fair and equitable treatment and legal protection for the investment.

## Article 13: Eligible Investors

(a) Any natural person and any juridical person may be eligible to receive the Agency's guarantee provided that:

(i) such natural person is a national of a member other than the host country;

(ii) such juridical person is incorporated and has its principal place of business in a member or the majority of its capital is owned by a member or members or nationals thereof, provided that such member is not the host country in any of the above cases; and

(iii) such juridical person, whether or not it is privately owned, operates on a commercial basis.

(b) In case the investor has more than one nationality, for the purposes of Section (a) above the nationality of a member shall prevail over the nationality of a non-member, and the nationality of the host country shall prevail over the nationality of any other member.

(c) Upon the joint application of the investor and the host country, the Board, by special majority, may extend eligibility to a natural person who is a national of the host country or a juridical person which is incorporated in the host country or the majority of whose capital is owned by its nationals, provided that the assets invested are transferred from outside the host country.

## Article 14: Eligible Host Countries

Investments shall be guaranteed under this Chapter only if they are to be made in the territory of a developing member country.

## Article 15: Host Country Approval

The Agency shall not conclude any contract of guarantee before the host government has approved the issuance of the guarantee by the Agency against the risks designated for cover.

## Article 16: Terms and Conditions

The terms and conditions of each contract of guarantee shall be determined by the Agency subject to such rules and regulations as the Board shall issue, provided that the Agency shall not cover the total loss of the guaranteed investment. Contracts of guarantee shall be approved by the President under the direction of the Board.

## Article 17: Payment of Claims

The President under the direction of the Board shall decide on the payment of claims to a holder of a guarantee in accordance with the contract of guarantee and such policies as the Board may adopt. Contracts of guarantee shall require holders of guarantees to seek, before a payment is made by the Agency, such administrative remedies as may be appropriate under the circumstances, provided that they are readily available to them under the laws of the host country. Such contracts may require the lapse of certain reasonable periods between the occurrence of events giving rise to claims and payments of claims.

## Article 18: Subrogation

(a) Upon paying or agreeing to pay compensation to a holder of a guarantee, the Agency shall be subrogated to such rights or claims related to the guaranteed investment as the holder of a guarantee may have had against the host country and other obligors. The contract of guarantee shall provide the terms and conditions of such subrogation.

(b) The rights of the Agency pursuant to Section (a) above shall be recognized by all members.

(c) Amounts in the currency of the host country acquired by the Agency as subrogated pursuant to Section (a) above shall be accorded, with respect to use and conversion, treatment by the host country as favorable as the treatment to which such funds would be entitled in the hands of the holder of the guarantee. In any case, such amounts may be used by the Agency for the payment of its administrative expenditures and other costs. The Agency shall also seek to enter into arrangements with host countries on other uses of such currencies to the extent that they are not freely usable.

## Article 19: Relationship to National and Regional Entities

The Agency shall cooperate with, and seek to complement the operations of, national entities of members and regional entities the majority of whose capital is owned by members, which carry out activities similar to those of the Agency, with a view to maximizing both the efficiency of their respective services and their contribution to increased flows of foreign investment. To this end, the Agency may enter into arrangements with such entities on the details of such cooperation, including in particular the modalities of reinsurance and coinsurance.

## Article 20: Reinsurance of National and Regional Entities

(a) The Agency may issue reinsurance in respect of a specific investment against a loss resulting from one or more of the non-commercial risks underwritten by a member or agency thereof or by a regional investment guarantee agency the majority of whose capital is owned by members. The Board, by special majority, shall from time to time prescribe maximum amounts of contingent liability which may be assumed by the Agency with respect to reinsurance contracts. In respect of specific investments which have been completed more than twelve months prior to receipt of the application for reinsurance by the Agency, the maximum amount shall initially be set at ten percent of the aggregate contingent liability of the Agency under this Chapter. The conditions of eligibility specified in Articles 11 and 14 shall apply to reinsurance operations, except that the reinsured investments need not be implemented subsequent to the application for reinsurance.

(b) The mutual rights and obligations of the Agency and a reinsured member or agency shall be stated in contracts of reinsurance subject to such rules and regulations as the Board shall issue. The Board shall approve each contract for reinsurance covering an investment which has been made prior to receipt of the application for reinsurance by the Agency, with a view to minimizing risks, assuring that the Agency receives premiums commensurate with its risk, and assuring that the reinsured entity is appropriately committed toward promoting new investment in developing member countries.

(c) The Agency shall, to the extent possible, assure that it or the reinsured entity shall have the rights of subrogation and arbitration equivalent to those the Agency would have if it were the primary guarantor. The terms and conditions of reinsurance shall require that administrative remedies are sought in accordance with Article 17 before a payment is made by the Agency. Subrogation shall be effective with respect to the host country concerned only after its approval of the reinsurance by the Agency. The Agency shall include in the contracts of reinsurance provisions requiring the reinsured to pursue with due diligence the rights or claims related to the reinsured investment.

## Article 21: Cooperation with Private Insurers and with Reinsurers

(a) The Agency may enter into arrangements with private insurers in member countries to enhance its own operations and encourage such insurers to provide coverage of non-commercial risks in developing member countries on conditions similar to those applied by the Agency. Such arrangements may include the provision of reinsurance by the Agency under the conditions and procedures specified in Article 20.

(b) The Agency may reinsure with any appropriate reinsurance entity, in whole or in part, any guarantee or guarantees issued by it.

(c) The Agency will in particular seek to guarantee investments for which comparable coverage on reasonable terms is not available from private insurers and reinsures.

## Article 22: Limits of Guarantee

(a) Unless determined otherwise by the Council by special majority, the aggregate amount of contingent liabilities which may be assumed by the Agency under this Chapter shall not exceed one hundred and fifty percent of the amount of the Agency's unimpaired subscribed capital and its reserves plus such portion of its reinsurance cover as the Board may determine. The Board shall from time to time review the risk profile of the Agency's portfolio in the light of its experience with claims, degree of risk diversification, reinsurance cover and other relevant factors with a view to ascertaining whether changes in the maximum aggregate amount of contingent liabilities should be recommended to the Council. The maximum amount determined by the Council shall not under any circumstances exceed five times the amount of the Agency's unimpaired subscribed capital, its reserves and such portion of its reinsurance cover as may be deemed appropriate.

(b) Without prejudice to the general limit of guarantee referred to in Section (a) above, the Board may prescribe:

(i) maximum aggregate amounts of contingent liability which may be assumed by the Agency under this Chapter for Guarantees issued to investors of each individual member. In determining such maximum amounts, the Board shall give due consideration to the share of the respective member in the capital of the Agency and the need to apply more liberal limitations in respect of investments originating in developing member countries; and

(ii) maximum aggregate amounts of contingent liability which may be assumed by the Agency with respect to such risk diversification factors as individual projects, individual host countries and types of investment or risk.

## Article 23: Investment Promotion

(a) The Agency shall carry out research, undertake activities to promote investment flows and disseminate information on investment opportunities in developing member countries, with a view to improving the environment for foreign investment flows to such countries. The Agency may, upon the request of a member, provide technical advice and assistance to improve the investment conditions in the territories of that member. In performing these activities, the Agency shall:

(i) be guided by relevant investment agreements among member countries;

(ii) seek to remove impediments, in both developed and developing member countries, to the flow of investment to developing member countries; and

(iii) coordinate with other agencies concerned with the promotion of foreign investment, and in particular the International Finance Corporation.

(b) The Agency also shall:

(i) encourage the amicable settlement of disputes between investors and host countries;

(ii) endeavor to conclude agreements with developing member countries, and in particular with prospective host countries, which will assure that the Agency, with respect to investment guaranteed by it, has treatment at least as favorable as that agreed by the member concerned for the most favored investment guarantee agency or State in an agreement relating to investment, such agreements to be approved by special majority of the Board; and

(iii) promote and facilitate the conclusion of agreements, among its members, on the promotion and protection of investments.

(c) The Agency shall give particular attention in its promotional efforts to the importance of increasing the flow of investments among developing member countries.

## Article 24: Guarantees of Sponsored Investments

In addition to the guarantee operations undertaken by the Agency under this Chapter, the Agency may guarantee investments under the sponsorship arrangements provided for in Annex I to this Convention.