

LAW OF INFORMATION ENERGY

THAILAND-MALAYSIA JOINT AUTHORITY ACT B.E. 2533

Bhumipol Adulyadej P.R.

Given on the 29th August, B.E. 2533 (1990)

Being the 45th Year of the Present Reign.

By Royal Command of His Majesty King Bhumipol Adulyadej, it is hereby proclaimed that:

Whereas it is deemed proper to enact a law on Thailand-Malaysia joint Authority,

Be it, therefore, enacted by the Kings most Excellent Majesty, by and with the advice and consent of the National Assembly, as follows:

Section 1. This Act shall be called the "Thailand-Malaysia Joint Authority Act B.E. 2533".

Section 2. This Act come into force as from the day following the date of its publication in the Government Gazette.*

Section 3. Those provisions of all other laws, regulations and rules in so far as they are stipulated herein or are contrary to or inconsistent with the provisions hereof shall be replaced hereby.

Section 4. In this Act, unless the context otherwise requires,

"Memorandum of Understanding, 1979 (B.E.2522)" means the Memorandum of Understanding between the Kingdom of Thailand and Malaysia 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, signed on 21 February 1979 (B.E.2522);

"Agreement" means Agreement on the Constitution and Other Matters Relating to the Establishment of the Thailand-Malaysia Joint Authority signed by the Government of the Kingdom of Thailand and the Government of Malaysia on 30 May B.E.2533, at Kuala Lumpur, Malaysia;

"Governments" means the Government of the Kingdom of Thailand and the Government of Malaysia;

"Joint Authority" means the Thailand-Malaysia Joint Authority;

"Fund" means Thailand-Malaysia Joint Authority Fund referred to under Section 12;

"Joint Development Area" means the defined area of the continental shelf of the Kingdom of Thailand and Malaysia in the Gulf of Thailand described under Section 9;

"Line dividing jurisdiction" means the straight line joining the following coordinated points:

(A) N 6° 50.0 E 102° 21.2

(X) N 7° 35.0 E 103° 23.0

which divides civil and criminal jurisdiction in the Joint Development Area;

"natural resources" means any non-living natural resources including any minerals, mineral oils and metals;

"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;

"Minister" means the Minister having charge and control of the execution of this Act.

Section 5. The Minister of Industry shall have charge and control of the charge of the execution of this Act and shall have the power to appoint competent officers and to issue Ministerial Regulations for the execution thereof.

Such Ministerial Regulations shall come into force after their publications in the Government Gazette.

PART I

THAILAND-MALAYSIA JOINT AUTHORITY

Section 6. There is hereby established a body by the name of the Thailand-Malaysia Joint Authority (referred to in this Act as "the Joint Authority").

The Joint Authority shall have a juristic personality and shall be domiciled in the Kingdom of Thailand and Malaysia.

Subject to and for the purposes of this Act, the Joint Authority is empowered to enter into contracts, and to acquire, purchase, take, hold and enjoy any movable and immovable property of every description, excluding the holding of title of land, and is empowered to convey, assign, surrender, charge, mortgage, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property or any interest therein vested in the Joint Authority upon such terms as it deems appropriate.

Section 7. The joint Authority shall have such powers and perform such functions as are necessary for the performance of its duties and the enjoyment of its rights and privileges under, and to the extent not inconsistent with, this Act.

Section 8. The Joint Authority is hereby vested with and assumes the exclusive rights, powers, liberties and privileges of exploring and exploiting the natural resources, in particular petroleum, in the joint Development Area.

PART II

THE JOINT DEVELOPMENT AREA

Section 9. The Joint Development Area shall be the area bounded by of straight lines joining the following coordinated points:

(A) N 6° 50.0 E 102° 21.2

(B) N 7° 10.25 E 102° 29.0

(C) N 7° 49.0 E 103° 02.5

(D) N 7° 22.0 E 103° 42.5

(E) N 7° 20.0 E 103° 39.0

(F) N 7° 03.0 E 103° 06.0

(G) N 6° 53.0 E 102° 34.0 and shown in the relevant part of the British Admiralty Chart No. 2414, Edition 1967 (B.E. 2510), a reproduction of which is as in the map annexed to this Act.

PART III

ROYALTY

Section 10. The Joint Authority shall pay royalty to each of the Government in the amount of five per centum of gross production of petroleum, in the manner and at such times as may be prescribed by Ministerial Regulations.

PART IV

FINANCIAL PROVISIONS

Section 11. 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.

During the period which the Joint Authority does not have sufficient income to finance its annual operational expenditure, the Government of the Kingdom of Thailand shall pay to the Fund annual payments as may be determined in accordance with the Agreement, subject to equal payments being made by the Government of Malaysia.

PART V

THE THAILAND-MALAYSIA JOINT AUTHORITY FUND

Section 12. For the purpose of this Act and the Agreement, there is hereby established a Fund called the Thailand-Malaysia Joint Authority Fund (referred to this Act as "the Fund") to be administered and controlled by the joint Authority.

The assets of the Fund shall include

- (1) contributions as may be provided by the Governments under the Agreement, and referred to under Section 11, paragraph 2;
- (2) monies earned by the operation of any projects, schemes or enterprises financed from the Fund;
- (3) monies earned or arising from any properties, investments, mortgages, or charges acquired by or vested in the Joint Authority;
- (4) monies borrowed by the Joint Authority for the purposes of meeting any of its obligations or discharging any of its duties; and
- (5) any other monies or properties which may in any manner become payable to or vested in the Joint Authority in respect of any matters incidental to its powers and duties.

Section 13. The Fund may be used for-

- (1) defraying such expenditures as the Joint Authority may incur in carrying out its functions and exercising its powers in accordance with the approved budgetary provisions and subject to any Ministerial Regulation issued under Section 18;
- (2) settling any monies borrowed by the Joint Authority under Section 15 paragraph 1 (3), including interests and other charges incidental to the borrowing;
- (3) investments as the Joint Authority may decide subject to the approval of the Governments; and
- (4) subject to Section 14, payment of monies in equal amounts to the Government out of income accruing to the Joint Authority after deducting the expenditures referred to in (1) and (2) including such other expenditures as may be agreed to by the Governments.

Section 14. The Joint Authority shall establish and manage a reserve fund within the Fund in accordance with such terms and conditions as the Governments may jointly decide

Section 15. The Joint Authority shall not undertake the following actions unless it has received prior approval from the Governments-

- (1) to give financial assistance to any company, body or person by the taking up of shares or debentures or by way of loan, advance, grant or otherwise;
- (2) to purchase, dispose, underwrite or otherwise acquire any stocks and shares in any public or private company; or
- (3) to borrow money, or enter into any guarantee or indemnity involving financial liability.

In giving any consent under paragraph 1 the Governments may jointly impose terms and conditions as they may deem appropriate.

Section 16. The provisions of this Act shall not create any responsibility whatsoever for the Government of the Kingdom of Thailand or the Government of Malaysia in respect of any liability of the Joint Authority.

PART VI

CONTRACTS FOR EXPLORATION AND EXPLOITATION

Section 17. Notwithstanding the provisions of any other written law, no person, except the Joint Authority, shall carry out any business of exploration and exploitation of any natural resources, including petroleum, in the Joint Development Area unless there is a contract entered into between the Joint Authority and such person to explore and exploit such natural resources.

A contract referred to under paragraph 1 shall require the prior approval of the Governments.

Subject to the provisions of paragraph 4, in the case where a contract referred to under paragraph 1 is the contract for exploration and exploitation of petroleum, such contract shall be a production sharing contract and shall include, amongst others, the following terms and conditions:

(1) for the purpose of Section 10, the contractor shall pay royalty in the amount of ten per centum of gross production of petroleum to the Joint Authority in the manner and at such times as may be specified in the contract;

(2) the contractor shall apply fifty per centum of gross production of petroleum for the purpose of recovery of costs for petroleum operations;

(3) the remaining portion of gross production of petroleum, after deductions for the purposes of (1) and (2), shall be deemed to be profit petroleum and be divided equally between the Joint Authority and the contractor;

(4) the contract shall be valid for a period not exceeding thirty-five years but shall not exceed the period of validity of the Agreement;

(5) all costs of petroleum operations shall be borne by the contractor and shall, subject to (2), be recoverable from production;

(6) 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;

(7) the contractor shall pay a research cess to the Joint Authority in the amount of one half of one per centum of the aggregate of the portion of gross production which is applied for the purpose of recovery of costs under (2) and the contractors share of profit petroleum under (3) 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

(8) 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 the United Nations Commission of International Trade Law (UNCITRAL). The arbitration proceedings shall be conducted in accordance with the rules of UNCITRAL. The venue of arbitration shall be either Bangkok or Kuala Lumpur, or any other place as may be agreed to by the parties.

The Joint Authority may vary any of the amounts referred to in (2), (3) and (7) of paragraph 3 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.

For the purposes of this section, "gross production" with reference to gas means gross proceeds of sale of gas.

PART VII

REGULATIONS

Section 18. The Minister, with the approval of the Governments, shall have the power to issue Ministerial Regulations in respect of the following:

(1) the conduct of or the carrying on of any business or service relating to the exploration and exploitation of the natural resources in the Joint Development Area;

(2) the payment of any monies due to the Governments from the Joint Authority under Section 10 and Section 13 (4);

(3) the terms and conditions of the appointment of, and the emoluments, travelling and subsistence allowances payable to, the Co-Chairman and other members of the Joint Authority;

(4) the procedure for the tender and award of any contract that may be entered into under Section 17, including the terms and conditions that may be included in such contract;

(5) the keeping of proper accounts and other records of the transactions and affairs of the Joint Authority in accordance with generally accepted accounting

principles;

(6) the preparation of annual statements of accounts and, subject to the provisions of this Act, the allocation of

(7) the audit of accounts and its subsequent submission to the Governments;

(8) the preparation and submission of the annual budget to the Governments;

(9) the rules and procedures for the exploration and exploitation of petroleum in the Joint Development Area; and

(10) any other matters for the purposes of carrying into effect the provisions of this Act:

Provided that in respect of the Ministerial Regulations relating to matters referred to under (1), (4), (5), (6), (7), (8) and (9) above, such regulations may be made after consultations with the Joint Authority.

PART VIII

OFFICERS AND JURISDICTION OF COURTS

Section 19. Any member, officer, servant, and agent of the Joint Authority and any competent officer who has been appointed by the Minister under Section 5 shall be the officer-designated under the Criminal Code.

Section 20. Notwithstanding the provisions of any other written law, the Provincial Court of Songkhla, the Civil Court or the Criminal Court shall have jurisdiction to try and adjudicate on any case under this Act or Ministerial Regulations issued thereunder.

For the purpose of the exercise of jurisdiction over any offence committed under this Act or Ministerial Regulations issued under Section 18, the provisions of Section 21 paragraph 2 and Section 21 paragraph 6 (2) and (4) shall apply.

PART IX

JURISDICTION

Section 21. Subject to paragraph 2 and paragraph 3, the Kingdom of Thailand shall continue to have and exercise jurisdiction over the Joint Development Area.

The civil and criminal jurisdiction of:

(1) The Kingdom of Thailand in the Joint Development Area shall extend over the area bounded by straight lines joining the following coordinated points:

(A) N 6° 50.0 E 102° 21.2

(B) N 7° 10.25 E 102° 29.0

(C) N 7° 49.0 E 103° 02.5

(X) N 7° 35.0 E 103° 23.0

(2) Malaysia in the joint Development Area shall extend over the area bounded by straight lines joining the following coordinated points:

(A) N 6° 50.0 E 102° 21.2

(X) N 7° 35.0 E 103° 23.0

(D) N 7° 22.0 E 103° 42.5

(E) N 7° 20.0 E 103° 39.0

(F) N 7° 03.0 E 103° 06.0

(G) N 6° 53.0 E 102° 34.0

The provisions of this Act shall not in any way affect the sovereign rights of the Kingdom of Thailand over the Joint Development Area, and any waiver of jurisdiction under this section shall have no force and effect beyond the period of validity of the Agreement.

The consent by the Kingdom of Thailand to the exercise of civil and criminal jurisdiction by Malaysia under (2) of paragraph 2 and to the continued exercise of jurisdiction over matters relating to customs and excise, and taxation in the Joint Development Area shall be conditional upon a reciprocal recognition of the Kingdom of Thailand's rights under (1) of paragraph 2.

Any jurisdiction that may be vested in the Kingdom of Thailand or Malaysia under this section in respect of the Joint Development Area shall only be over matters and to the extent provided for in any law relating to the continental shelf and as recognised under international law.

For the purpose of this section-

(1) "civil and criminal jurisdiction" shall not include jurisdiction over matters relating to customs and excise, and taxation;

(2) criminal jurisdiction over an offence committed on a platform or an installation which straddles the line dividing jurisdiction and constructed for the purposes of exploration and exploitation of the natural resources of the sea-bed and subsoil in the Joint Development Area is to be assumed exclusively by the Kingdom of Thailand or Malaysia in accordance with the designation of such platform or installation as Thai or Malaysian;

(3) the determination of whether a platform or an installation which straddles the line dividing jurisdiction and constructed for the purposes of exploration and exploitation of the natural resources of the sea-bed and subsoil in the Joint Development Area is part of the Kingdom of Thailand or Malaysia in relation to any question that falls to be determined in any civil proceedings or for the purpose of the assumption or exercise of civil jurisdiction by the Kingdom of Thailand or Malaysia shall be in accordance with the designation of such platform or installation as Thai or Malaysian; and

(4) the designation of a platform or an installation as Thai or Malaysian under (2) and (3) shall be determined according to the principle of most substantial location.

PART X

RIGHTS IN SUPERJACENT WATERS

Section 22. The provisions of this Act shall neither regulate any rights, liberties and privileges, including to those relating to fishing, nor affect any claims thereof, that the Kingdom of Thailand or Malaysia may have over the superjacent waters of the Joint Development Area by virtue of Article IV of the Memorandum of Understanding, 1979 (B.E. 2522).

PART XI

OFFENCES AND PENALTIES

Section 23. Subject to Section 25, any person, including a director or officer of a body corporate, who violates Section 17 paragraph 1, shall be liable to imprisonment for a term not exceeding five years or to a fine not exceeding five hundred thousand Baht or to both; and, in the case of a continuing offence, shall be liable to a further fine not exceeding ten thousand Baht per day or part of a day during which the offence continues after the first day of pronouncement of the judgement; and any machinery, tools, plants, buildings and other properties or things used or intended to be used in the commission of the offence shall be forfeited.

Section 24. Subject to Sections 23 and 25, any person, including a director or officer of a body corporate, who violates any provision of this Act or Ministerial Regulation issued under Section 18 shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding two hundred thousand Baht or to both; and, in the case of a continuing offence, shall be liable to a further fine not exceeding two thousand Baht per day or part of a day during which the offence continues after the first day of pronouncement of the judgement.

Section 25. Where a person convicted in respect of any offence referred to under Section 23 or 24 is a body corporate, it shall only be liable to the imposition of any fine provided therein.

Section 26. Where a person charged with an offence under this Act or any Ministerial Regulation issued under Section 18 is a body corporate every person who,

at the time of the commission of the offence, is a director or officer of the body corporate may be charged jointly in the same proceedings with the body corporate, and where the body corporate is convicted of the offence charged, every such director or officer shall be deemed to be guilty of that offence unless he can prove that the offence was committed without his knowledge or that he took reasonable precautions to prevent its commission.

Section 27. If an agent of a person commits the offences under this Act or any Ministerial Regulation issued under Section 18, that person shall also be deemed to be liable to the same penalty as his agent, unless he can prove that he has taken reasonable precautions to prevent the doing or omission of the thing.

Countersigned

General Chatchai Choonhavan

Prime Minister

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