

MALAYSIA-THAILAND JOINT AUTHORITY ACT 1990

ACT 440

Preamble

An Act to give effect to an agreement on the establishment and operation of the Malaysia-Thailand Joint Authority and to make provisions connected therewith.

[23 January 1991.]

WHEREAS pursuant to 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, the Agreement on the Constitution and Other Matters Relating to the Establishment of the Malaysia-Thailand Joint Authority was signed on 30 May 1990, at Kuala Lumpur, Malaysia, between the Government of Malaysia and the Government of the Kingdom of Thailand;

NOW THEREFORE, BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong, with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by authority of the same, as follows:

PART I

PRELIMINARY

1. Short title and commencement.

(1) This Act may be cited as the Malaysia-Thailand Joint Authority Act 1990.

(2) This Act shall come into force on such date as the Minister may, by notification in the Gazette, appoint.

2. Interpretation.

In this Act, unless the context otherwise requires-

"Agreement" means Agreement on the Constitution and Other Matters Relating to the Establishment of the Malaysia-Thailand Joint Authority signed by the Government of Malaysia and the Government of the Kingdom of Thailand on 30 May 1990, at Kuala Lumpur, Malaysia;

"Fund" means the Malaysia-Thailand Joint Authority Fund referred to under section 9;

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

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

"Joint Development Area" means the defined area of the continental shelf of Malaysia and the Kingdom of Thailand in the Gulf of Thailand described under section 6;

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

(A) N 6272 50'.0 E 102272 21'.2

(X) N 7272 35'.0 E 103272 23'.0

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

"Memorandum of Understanding, 1979" means 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, signed on 21 February 1979;

"Minister" means the Minister charged with the responsibility for petroleum;

"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.

PART II

MALAYSIA-THAILAND JOINT AUTHORITY

3. Establishment of Malaysia-Thailand Joint Authority.

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

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

(3) The Joint Authority shall be a body corporate and, subject to and for the purposes of this Act, may enter into contracts, and may acquire, purchase, take, hold and enjoy any movable and immovable property of every description, excluding land, and may 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.

4. Powers and functions of Joint Authority.

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.

5. Exploration and exploitation of natural resources.

The Joint Authority hereby is 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 III

THE JOINT DEVELOPMENT AREA

6. The Joint Development Area.

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

(A) N 6272 50'.0 E 102272 21'.2

(B) N 7272 10'.25 E 102272 29'.0

(C) N 7272 49'.0 E 103272 02'.5

(D) N 7272 22'.0 E 103272 42'.5

(E) N 7272 20'.0 E 103272 39'.0

(F) N 7272 03'.0 E 103272 06'.0

(G) N 6272 53'.0 E 102272 34'.0

and shown in the relevant part of the British Admiralty Chart No. 2414, Edition 1967, a reproduction of which is as in the Schedule.

PART IV

ROYALTY

7. Royalty.

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

PART V FINANCIAL PROVISIONS

8. Cost, benefit and annual payment.

(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 Government of Malaysia shall pay to the Fund such annual payments as may be determined in accordance with the Agreement subject to equal payments being made by the Government of the Kingdom of Thailand.

PART VI THE MALAYSIA THAILAND JOINT AUTHORITY FUND

9. Establishment of Fund.

(1) For the purposes of this Act and the Agreement, there is hereby established a fund called the Malaysia-Thailand Joint Authority Fund (referred to in this Act as "the Fund") to be administered and controlled by the Joint Authority.

(2) The assets of the Fund shall include-

(a) such contributions as may be provided by the Governments under the Agreement, and referred to under subsection (2) of section 8;

(b) monies earned by the operation of any projects, schemes or enterprises financed from the Fund;

(c) monies earned or arising from any properties, investments, mortgages, or charges acquired by or vested in the Joint Authority;

(d) monies borrowed by the Joint Authority for the purposes of meeting any of its obligations or discharging any of its duties; and

(e) 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.

10. Application of Fund.

The Fund may be used for-

(a) 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 regulation made under section 15;

(b) settling any monies borrowed by the Joint Authority under paragraph (c) of subsection (1) of section 12, including interests and other charges incidental to the borrowing;

(c) such investments as the Joint Authority may decide subject to the approval of the Governments; and

(d) subject to section 11, payment of monies in equal amounts to the Governments out of income accruing to the Joint Authority after deducting the expenditures referred to in paragraphs (a) and (b) including such other expenditures as may be agreed to by the Governments.

11. Reserve Fund.

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.

12. Restriction on financial dealings.

(1) The Joint Authority shall not, without the prior approval of the Governments-

(a) 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;

(b) purchase, underwrite or otherwise acquire any stocks and shares in any public or private company; or

(c) borrow money, or enter into any guarantee or indemnity involving financial liability.

(2) In giving any consent under subsection (1) the Governments may jointly impose such terms and conditions as they may deem appropriate.

13. Liability of Joint Authority not the responsibility of Governments.

Nothing in this Act shall be construed as creating any responsibility whatsoever for the Government of Malaysia or the Government of the Kingdom of Thailand in respect of any liability of the Joint Authority.

PART VII

CONTRACT FOR EXPLORATION AND EXPLOITATION

14. Prohibition on exploration or exploitation of natural resources without contract.

(1) Notwithstanding the provisions of any other written law, no business of exploration and exploitation of any natural resources, including petroleum, may be carried out in the Joint Development Area by any person other than the Joint Authority unless there is in respect of any such business a contract entered into between the Joint Authority and such person to explore and exploit such natural resources.

(2) A contract referred to under subsection (1) shall require the prior approval of the Governments.

(3) Subject to the provisions of subsection (4), a contract referred to under subsection (1) for the purpose of the exploration and exploitation of petroleum shall be a production sharing contract and shall include, amongst others, the following terms and conditions:

(a) for the purpose of section 7, 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;

(b) fifty per centum of gross production of petroleum shall be applied by the contractor for the purpose of recovery of costs for petroleum operations;

(c) the remaining portion of gross production of petroleum, after deductions for the purposes of paragraphs (a) and (b), shall be deemed to be profit petroleum and be divided equally between the Joint Authority and the contractor;

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

(e) all costs of petroleum operations shall be borne by the contractor and shall, subject to paragraph (b), 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 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 paragraph (b) and the contractor's share of profit petroleum under paragraph (c) 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 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.

(4) The Joint Authority may vary any of the amounts referred to in paragraphs (b), (c) and (g) of subsection (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.

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

PART VIII REGULATIONS

15. Power of Minister to make regulations.

The Minister may, with the approval of the Governments, make regulations in respect of the following:

- (a) 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;
 - (b) the payment of any monies due to the Governments from the Joint Authority under section 7 and paragraph (d) of section 10;
 - (c) the terms and conditions of the appointment of, and the emoluments, travelling and subsistence allowances payable to, the Co-Chairmen and other members of the Joint Authority;
 - (d) the procedure for the tender and award of any contract that may be entered into under section 14, including the terms and conditions that may be included in such contract;
 - (e) the keeping of proper accounts and other records of the transactions and affairs of the Joint Authority in accordance with generally accepted accounting principles;
 - (f) the preparation of annual statements of accounts and, subject to the provisions of this Act, the allocation of profits;
 - (g) the audit of accounts and its subsequent submission to the Governments;
 - (h) the preparation and submission of the annual budget to the Governments;
 - (i) the standards for the exploration and exploitation of petroleum in the Joint Development Area; and
 - (j) any other matters for the purposes of carrying into effect the provisions of this Act:
- Provided that in respect of the matters referred to under paragraphs (a), (d), (e), (f), (g), (h) and (i), such regulations may be made after consultations with the Joint Authority.

PART IX OFFICERS AND JURISDICTION OF COURTS

16. Public servants.

Any member of the Joint Authority or any officer, servant or agent of the Joint Authority shall be deemed to be a public servant within the meaning of the Penal Code.

17. Jurisdiction of Sessions Court.

(1) Notwithstanding anything contained in any other written law to the contrary, a Sessions Court shall have jurisdiction to try any offence under this Act or any regulation made thereunder and, on conviction, to impose the full penalty prescribed therefor.

(2) For the purpose of the exercise of jurisdiction over any offence committed under this Act or any regulation made under section 15, subsection (2), and paragraphs (b) and (d) of subsection (6) of section 18 shall apply.

PART X JURISDICTION

18. Jurisdiction over Joint Development Area.

(1) Subject to subsections (2) and (3), Malaysia shall continue to have and exercise jurisdiction over the Joint Development Area.

(2) The civil and criminal jurisdiction of-

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

(A) N 6272 50'.0 E 102272 21'.2

(X) N 7272 35'.0 E 103272 23'.0

(D) N 7272 22'.0 E 103272 42'.5

(E) N 7272 20'.0 E 103272 39'.0

(F) N 7272 03'.0 E 103272 06'.0

(G) N 6272 53'.0 E 102272 34'.0; and

(b) 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 6272 50'.0 E 102272 21'.2

(B) N 7272 10'.25 E 102272 29'.0

(C) N 7272 49'.0 E 103272 02'.5

(X) N 7272 35'.0 E 103272 23'.0

(3) Nothing in this Act shall in any way affect the sovereign rights of Malaysia 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.

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

(5) Any jurisdiction that may be vested in Malaysia or the Kingdom of Thailand 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 as recognised under international law.

(6) For the purpose of this section-

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

(b) 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 Malaysia or the Kingdom of Thailand in accordance with the designation of such platform or installation as Malaysian or Thai;

(c) 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 Malaysia or the Kingdom of Thailand 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 Malaysia or the Kingdom of Thailand shall be in accordance with the designation of such platform or installation as Malaysian or Thai; and

(d) the designation of a platform or an installation as Malaysian or Thai under paragraphs (b) and (c) shall be determined according to the principle of most substantial location.

PART XI

RIGHTS IN SUPERJACENT WATERS

19. Right, liberty or privilege in superjacent waters.

Nothing in this Act shall in any way regulate, or affect any claims in respect of, any rights, liberties and privileges, including but not limited to those relating to fishing, that Malaysia or the Kingdom of Thailand may have over the superjacent waters of the Joint Development Area by virtue of Article IV of the Memorandum of Understanding, 1979.

20. Contravention of subsection (1) of section 4.

Subject to section 22, any person, including a director or officer of a body corporate, who acts in contravention of the provision of subsection (1) of section 14 shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand ringgit or to both, and, in the case of a continuing offence, be liable to a further fine not exceeding one thousand ringgit for each day or part of a day during which the offence continues after the first day in respect of which the conviction is recorded; 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 liable to forfeiture.

21. Other offences.

Subject to sections 20 and 22, any person, including a director or officer of a body corporate, who acts in contravention of any provision of this Act or regulation made under section 15 shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding two years or to a fine not exceeding twenty thousand ringgit or to both, and, in the case of a continuing offence, shall be liable to a further fine not exceeding two hundred ringgit for each day or part of a day during which the offence continues after the first day in respect of which the conviction is recorded.

22. Offence by body corporate.

Where a person convicted in respect of any offence referred to under section 20 or 21 is a body corporate, it shall only be liable to the imposition of any fine provided therein.

23. Director and officer of body corporate may be charged jointly with body corporate.

Where a person charged with an offence under this Act or any regulation made under section 15 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 proves that the offence was committed without his knowledge or that he took reasonable precautions to prevent its commission.

24. Penalty for offence due to anything done or omitted by agent.

Any person who would be liable under this Act or any regulation made under section 15 to any penalty for anything done or omitted if the thing had been done or omitted by him personally, shall be liable to the same penalty if the thing had been done or omitted by his agent, unless he proves that he took reasonable precautions to prevent the doing or omission of the thing.

PART XIII

GENERAL

25. This Act to prevail over other laws.

Where any provision of this Act is in conflict or is inconsistent with any provision of any other law, the provision of this Act shall prevail.

26. Charge and control of this Act.

The Minister shall have charge and control of the execution of this Act and any regulation made under section 15, and shall have the power to appoint officials for the execution thereof.