

# **AGREEMENT between the Government of the Republic of Finland and the Government of the Republic of Indonesia for the Promotion and Protection of Investments**

The Government of the Republic of Finland and the Government of the Republic of Indonesia, hereinafter referred to as the "Contracting Parties";

Desiring to expand and deepen economic and industrial cooperation on a long term basis and, in particular, to create favourable conditions for investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party;

Recognizing the need to protect investments by nationals and companies of both Contracting Parties and to stimulate the flow of investments and individual business initiative with a view to expanding the economic prosperity of both Contracting Parties;

Have agreed as follows:

## **Article I. Definitions**

For the purpose of this Agreement:

1. The term "Investment" means any kind of assets invested and in particular, though not exclusively, includes:
  - a. movable and immovable property and property rights such as mortgages, liens and pledges;
  - b. shares, stocks, debentures of companies or interests in companies, securities issued by investors and returns retained for the purpose of re-investment;
  - c. title or claim to money or claim to any performance having economic value;
  - d. intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, business names, industrial designs, trade secrets, technical processes, know-how and goodwill;
  - e. business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any alteration in the form in which assets are invested shall not affect their character as investment.

2. The term "Investor" means any national or company of a Contracting Party who has effected or is effecting investments in the territory of the other Contracting Party.
3. The term "Returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties and fees.
4. The term "National" means any physical person who is a citizen of either Contracting Party according to its laws.
5. The term "Company" means any enterprise, institution or other juridical person constituted in the territory of either Contracting Party in accordance with its laws and regulations.
6. The term "Territory" means the land and sea area and the adjacent areas of either Contracting Party as defined in its laws and over which the Contracting Party exercises sovereign rights or jurisdiction in accordance with international law and the provisions of the United Nations Convention on the Law of the Sea of 1982.

## **Article II. Promotion and Protection of Investments**

1. Each Contracting Party shall in its territory admit investments by investors of the other Contracting Party in accordance with its laws and regulations and encourage such investments.
2. Investments by investors of either Contracting Party shall, at all times, subject to its laws and regulations, be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

### **Article III. Most-favoured-nations Provisions**

1. Investments by investors of either Contracting Party in the territory of the other Contracting Party shall not be subjected to treatment less favourable than that accorded to investments by investors of any third State.
2. Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards the management, use, enjoyment or disposal of their investments, as well as to any activity connected with these investments, to treatment less favourable than that which it accords to investors of any third State.

### **Article IV. Compensation for Damages and Losses**

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to investors of any third State.
2. The payments related to the above mentioned restitution, indemnification, compensation or other settlement shall be freely transferable in a convertible currency.

### **Article V. Exceptions**

The provisions of this Agreement relative to the granting of treatment no less favourable than that accorded to the investors of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

- a. any existing or future customs union, free trade area, common external tariff area, monetary union, cross border trade arrangement, similar international agreement or other form of similar regional cooperation to which either of the Contracting Parties is party; or
- b. any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

### **Article VI. Expropriation**

1. Neither Contracting Party shall take any measures of expropriation, nationalization or other dispossession, having effect equivalent to nationalization or expropriation against the investment of an investor of the other Contracting Party, except under the following conditions:
  - a. the measures are taken for a public purpose and under due process of law in accordance with international law;
  - b. the measures are not discriminatory;
  - c. the measures are accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investments effected immediately before the measures referred to above in this paragraph were taken or became public knowledge and it shall be freely transferable in a freely convertible currency at the market rate of exchange prevailing on the date used for the determination of value. The transfer shall be effected without delay within such a period as normally required for the completion of transfer formalities, in any case not exceeding six months. The compensation shall include interest from the date of expropriation until the date of payment at the appropriate commercial rate.
2. The provisions of paragraph 1. of this Article shall also apply to the returns from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

### **Article VII. Repatriation of Investments**

1. Each Contracting Party shall, subject to its laws and regulations, allow without delay, in any case within a period not exceeding six months, the transfer in a freely convertible currency:
  - a. the net profits, dividend, royalties, technical assistance and technical fees, interest and other current income, accruing from any investment of an investor of the other Contracting Party;
  - b. the proceeds from the total or partial liquidation or sale of any investment of an investor of the other Contracting Party;
  - c. funds in repayment of loans;
  - d. the earnings of nationals of the other Contracting Party who are employed and allowed to work in connection with an investment in its territory.
2. Each Contracting Party shall, subject to its laws and regulations, allow free transfer from its territory of movable property constituting part of an investment by an investor of the other Contracting Party.
3. The Contracting Parties undertake to accord to transfers referred to in paragraphs 1. and 2. of this Article treatment no less favourable than that accorded to transfers originating from investments made by investors of any third State.

## **Article VIII. Application of other Laws**

If the provision of law of either Contracting Party or obligation under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement, contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall to the extent that it is more favourable, prevail over the present Agreement.

## **Article IX. Settlement of Investment Disputes between Investors and the Contracting Party**

1. Each Contracting Party hereby consents to submit to the International Centre for the Settlement of Investment Disputes (the Centre") for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States ("the Convention"), opened for signature at Washington on 18 March 1965 any legal dispute arising between that Contracting Party and an investor of the other Contracting Party concerning an investment of an investor of the latter in the territory of the former.
2. If any dispute should arise and an agreement cannot be reached within six months between the parties to this dispute, the investor affected having also consented in writing to submit the dispute to the Centre for settlement by conciliation or arbitration under the Convention, either party may institute proceedings by addressing a request to that effect to the Secretary General of the Centre as provided for in Article 28 and Article 36 of the Convention. In the event of disagreement as to whether conciliation or arbitration is the more appropriate procedure, the investor affected shall have the right to choose. The Contracting Party which is a party to the dispute shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the investor of the other Contracting Party has received in pursuance of an insurance contract an indemnity in respect of its losses.
3. Neither Contracting Party shall pursue through diplomatic channels any dispute referred to the Centre unless:
  - a. the Secretary General of the Centre, a conciliation commission or an arbitral tribunal constituted by it, decides that the dispute is not within the jurisdiction of the Centre, or
  - b. the other Contracting Party should fail to abide by or to comply with any award rendered by an arbitral tribunal.

## **Article X. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.
2. If a dispute between the Contracting Parties cannot thus be settled within six months, it shall upon the request of either Contracting Party be submitted to international arbitral tribunal as agreed upon by the Contracting Parties.

## **Article XI. Subrogation**

If a Contracting Party or its designated agency makes a payment to any of its investors under a guarantee it has granted in respect to an investment, the other Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article X, recognize the transfer of any right or title of such investor to the former Contracting Party and the subrogation of the former Contracting Party to any right or title. As regards the transfer of payments by virtue of subrogation the provisions of Article VI and Article VII shall apply respectively.

## **Article XII. Applicability of this Agreement**

This Agreement shall apply to investments by investors of the Republic of Finland in the territory of the Republic of Indonesia which have been previously granted admission in accordance with the law No. I of 1967 on Foreign Capital Investment and any law amending or replacing it, and to investments by investors of the Republic of Indonesia in the territory of the Republic of Finland in accordance with the laws and regulations of the latter.

## **Article XIII. Consultations and Amendments**

Either Contracting Party may request consultations on any matter both Contracting Parties agree to discuss, including the possibility to make amendments to this Agreement.

## **Article XIV. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force on the thirtieth day after the date on which the Governments of the Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled.
2. This Agreement shall remain in force for a period of ten (10) years. Thereafter it shall remain in force until the expiration of twelve months from the date either Contracting Party notifies in writing the other Contracting Party of its decision to terminate this Agreement.
3. With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of Articles I to XIII shall continue to be valid for a period of ten (10) years from such date of termination.

EN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Helsinki on 13 March 1996 in duplicate in the English language.

For the Government of the Republic of Finland

Jukka Vahasaan

For the Government of the Republic of Indonesia

Soemadi DM. Brotodiningrat

## **PROTOCOL**

At the signing today of the Agreement between the Republic of Finland and the Republic of Indonesia for the Promotion and Protection of Investments the undersigned representatives have agreed on the following provision which constitutes an integral part of the Agreement:

The Government of the Republic of Indonesia, while recognizing the principle of national treatment of investments made by investors of the Republic of Finland in the territory of the Republic of Indonesia, reserves its right to maintain limited exceptions to national treatment. This treatment shall in no case be less favourable than Law no. 1 of 1967, as amended in 1970, permits.

Done at Helsinki on 13 March 1996, in duplicate in the English language.

For the Government of the Republic of Finland

Jukka Valtasaari

For the Government of the Republic of Indonesia

Soemadi DM. Brotodiningrat