

AGREEMENT BETWEEN THE FRENCH REPUBLIC AND THE REPUBLIC OF INDONESIA ON THE ENCOURAGEMENT AND PROTECTION OF FRENCH INVESTMENTS IN INDONESIA

The Government of the French Republic and the Government of the Republic of Indonesia,

Desiring to reinforce economic cooperation between both States, and anxious to intensify cooperation between enterprises of both States, and more specifically with the purpose of promoting investments by French nationals or legal persons in the territory of the Republic of Indonesia by the insurance of such investments by the Government of the French Republic;

Conscious of the contribution which can be made to this purpose by the conclusion of an agreement concerning the encouragement and protection of French investments in Indonesia;

Have agreed as follows:

Article 1.

The Government of the French Republic shall promote as far as possible the investment of capital of French nationals or legal persons in the territory of Indonesia and the Government of the Republic of Indonesia shall admit such investments in accordance with its legislation and administrative procedure.

The Government of the Republic of Indonesia shall accord to such French investments fair and equitable treatment for both the practice of professional activities related to these investments and for the management, operation, enjoyment and use of said investments.

Article 2.

The Government of the French Republic, after having examined each project of investment to be made in the territory of the Republic of Indonesia by French nationals or legal persons according to its rules and procedures, will be authorized to guarantee under a contract of insurance with the French investors concerned, provided however that a document of admission of the French investment has been issued by the Government of the Republic of Indonesia.

Article 3..

The document of admission as mentioned in the preceding Article 2 of this Agreement shall contain the terms and conditions under which the French investment in the territory of the Republic of Indonesia has to be made, and it shall particularly contain the right of the French investor concerned to have recourse to the International Centre for Settlement of Investment Disputes (ICSID), if in the case of a dispute between the French investor and the Government of the Republic of Indonesia no amicable solution has been reached within five months.

Article 4..

To the investments of French nationals or legal persons in the territory of the Republic of Indonesia shall be accorded by the Indonesia Government a treatment, especially in the field of safety, protection and taxation, no less favourable than that which it accords in its territory to any similar investment made by its own nationals or legal persons, or by nationals or legal persons of third States, with due regard to the stipulations contained in the Protocol attached to the present Agreement and forming an integral part hereof.

Article 5.

1. In the event that the French Government, pursuant to Article 2 of this Agreement, makes payments to its nationals or legal persons under a guarantee it has assumed in respect of an investment in the territory of the Republic of Indonesia, the Indonesian Government shall recognize that the French Government becomes by this fact fully subrogated with respect to the rights of those French nationals or legal persons towards the Government of the Republic of Indonesia.

2. The said payments shall not affect the rights of the guaranteed French national or legal person to have recourse to the International Centre for Settlement of Investment Disputes (ICSID) pursuant to Article 3 of this Agreement, or to pursue action brought before [the above-mentioned ICSID until the dispute is settled.

Article 6..

1. The Government of the Republic of Indonesia shall not take measures of expropriation or of nationalization or any other measures the effect of which, either directly or indirectly, is to dispossess French nationals or legal persons of their investments in the territory of the Republic of Indonesia, except for the public benefit without aiming particularly at French investments and against payment of effective and adequate compensation.

2. Such compensation shall represent the commercial value of the investment at the time of expropriation, nationalization or dispossession, and it shall be actually realizable, freely transferable and be made without undue delay.

3. Provisions shall be made in an appropriate manner at or prior to the time of expropriation, nationalization or dispossession for the determination and payment of such compensation.

Article 7..

The present Agreement shall apply only with respect to investments in projects made by French nationals or legal persons in the territory of the Republic of Indonesia which are insured for guarantee by the French Government and are approved in writing by a document of admission issued by the Government of the Republic of Indonesia pursuant to the Foreign Capital Investment Law of 1967 (Law No. 1 of 1967) as subsequently amended.

Article 8.

1. Disputes concerning the interpretation or implementation of the present Agreement shall be settled by means of diplomatic negotiations between the Governments of both Contracting Parties.

2. If both Contracting Parties are unable to reach an agreement within a period of five months, the dispute shall, upon request of either Contracting Party, be submitted to an arbitral tribunal composed of three members. Each Contracting Party shall appoint one arbitrator and these two arbitrators shall nominate a third arbitrator as chairman who shall be a national of a third State.

3. If either Contracting Party has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make such appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

4. If the two arbitrators are unable to reach an agreement on the choice of the third arbitrator within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

5. If, in the cases specified under paragraphs 3 and 4 of this article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the next senior Judge of the Court who is not a national of either Contracting Party.

6. Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.

7. The tribunal shall reach its decision by a majority of votes and such decision shall be final and binding on both Contracting Parties.

Article 9.

1. The present Agreement shall enter into force on the day the two Contracting Parties notify each other by diplomatic notes

that their constitutional requirements for the entering into force of this Agreement have been fulfilled, and shall remain binding for a period of ten years.

2. Unless either of the Contracting Parties shall have given notice of termination six months before the expiry of the current period, the validity of the present Agreement shall be deemed to have been tacitly extended for a further period of each time ten years.

Article 10..

In case of termination of the present Agreement, the provisions thereof shall continue to be effective for the investments covered by this Agreement and admitted by the Contracting Party prior to the notification of termination of the present Agreement.

Article 11.

The Contracting Parties will apply provisionally the present Agreement as from the date of its signature

IN WITNESS WHEREOF, the undersigned Representatives, duly authorized thereto, have signed the present Agreement.

Done at Jakarta, this 14th day of June, 1973, in four originals, two in English and two in French, each text being equally authentic.

For the Government of the French Republic:

[Signed] G. NEBOT

For the Government of the Republic of Indonesia:

[Signed] G. Roesli Noor

PROTOCOL

At the time of signing the Agreement between the Government of the French Republic and the Government of the Republic of Indonesia concerning the Encouragement and Protection of French Investments in Indonesia, the undersigned Plenipotentiaries have in addition agreed on the following understanding which shall be regarded as an integral part of the said Agreement:

Referring to Article 4

For the purpose of protecting the Indonesian national economy, the Government of the Republic of Indonesia may have already granted some facilities to Indonesian enterprises which do not fully apply to French enterprises. When, pursuant to present or subsequent legislation, the Indonesian Government extends additional advantages to Indonesian investors, the Indonesian Government shall, in order to ensure fair and equitable treatment, grant identical or compensating facilities to French investors engaged in similar economic activities.

In any case the Government of the Republic of Indonesia will grant to the French investments the same treatment that it has extended or will extend to the investment of the most favoured third country.

Done at Jakarta, this 14th day of June, 1973, in four originals, two in English and two in French, each text being equally authentic.

For the Government of the French Republic:

[Signed] G. NEBOT

For the Government of the Republic of Indonesia:

[Signed] G. Roesli Noor

Exchange of Letters

DEPARTMENT OF FOREIGN AFFAIRS REPUBLIC OF INDONESIA

Jakarta, 14 June, 1973

Dear Sir, I have the honour to acknowledge receipt of your letter of even date which reads as follows:

"I have the honour to inform you that the document of admission as mentioned under Article 2 of the Agreement between the Republic of Indonesia and the French Republic on the Encouragement and Protection of French Investments in Indonesia of today's date will include at least the following provisions with regard to transfers:

1. The Government of the Republic of Indonesia assumes the right of free transfer of:

- the net profits, interests, dividends, royalties, depreciation of capital assets and any current income, accruing from investment activities of French nationals;
- the proceeds of the total or partial liquidation of any investment, including possible increases in or addition to this investment, made by French investors;
- an appropriate portion of the earnings of French nationals who are authorized to work in the territory of the Republic of Indonesia;
- funds in repayment of loans recognized as investments;
- the compensation for dispossession mentioned in Article 6 of the abovementioned Agreement,

2. The abovementioned transfers shall be made at the official exchange rate applicable on the date of transfer without any discriminatory rate of exchange for this kind of operations.

3. Any authorization to transfer shall be issued, and any transfer shall be carried out, without undue restriction and without delay, in conformity with the most favourable relevant rules in force in the territory of the Republic of Indonesia.

I shall be grateful to receive your confirmation of the abovementioned understanding reached between our two Delegations.

Accept, Sir, the renewed assurances of my highest consideration."

I have the honour to confirm the abovementioned understanding reached between our two Delegations,

Accept, Sir, the renewed assurances of my highest consideration,

[Signed]

G. Roesli Noor

Chairman of the Indonesian Delegation

Mr. G. Nebot

Chairman of the French Delegation

Jakarta