

# Agreement between the Government of the Republic of Poland and the Government of the Republic of Indonesia on the Promotion and Protection of Investments

The Government of the Republic of Poland and the Government of the Republic of Indonesia (hereinafter referred to as "Contracting Parties");

Bearing in mind the friendly and co-operative relations existing between the two countries and their peoples;

Intending to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party on the basis of sovereign equality and mutual benefit; and

Recognizing that the promotion and protection of such investments will be conducive to the stimulation of individual business initiative and to foster prosperity in both countries;

Have agreed as follows:

## Article I. Definitions

For the purpose of this Agreement:

1. "Investments" mean any kind of asset invested by investors being a national of one Contracting Party in the territory of the other, in conformity with the laws and regulations of the latter, including but not exclusively:
  - a. Movable and immovable property as well as other rights such as mortgages, liens or pledges;
  - b. Shares, stocks and debentures of companies or interests in the property of such companies;
  - c. Claims to money or to any performance under contract related to investment having a financial value;
  - d. Intellectual property rights including copyrights, commercial trade marks, patents, industrial designs, know-how, trade secrets, trade names and goodwill;
  - d. Business concessions of economic value conferred by law or under contract related to investment including concessions to search for, cultivate, extract or exploit natural resources.
2. "Investors" mean any nationals or companies of one Contracting Party who effected or is effecting investments in the territory of the other Contracting Party.
3. "Nationals" mean:

In respect of both Contracting Parties:

Natural persons who are according to the laws of either Contracting Parties are their nationals.

4. "Companies" mean:

- a. In respect of the Republic of Poland:

Any company, firm, organization or association incorporated or constituted in accordance with the laws of the Republic of Poland;

- b. In respect of the Republic of Indonesia:

Any company with a limited liability incorporated in the territory of the Republic of Indonesia or any juridical person constituted in accordance with its laws.

5. "Returns" or "incomes" mean the amounts yielded by an investment and in particular, though not exclusively, include profit, interest, capital gains, dividends, royalties or fees.

6. "Territory" mean:

a. In respect of the Republic of Poland,

The territory of the Republic of Poland, including any area outside its territorial sea within which under the laws of Poland and in accordance with international law the sovereign rights of Poland with respect to the seabed and its subsoil and their natural resources may be exercised;

b. In respect of the Republic of Indonesia,

The territory of the Republic of Indonesia as defined in its laws and parts of the continental shelf and adjacent seas, over which the Republic of Indonesia has sovereignty, sovereign rights or other rights in accordance with international law.

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

1. Either Contracting Party shall encourage and create favourable conditions for nationals or companies of the other Contracting Party to invest in its territory, and shall admit such capital in accordance with its laws and regulations.

2. Investments of nationals or companies of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy adequate protection and security in the territory of the other Contracting Party.

## **Article III. Scope of Agreement**

This Agreement shall apply to investments by investors of the Republic of Poland in the territory of the Republic of Indonesia which have been granted admission in accordance with the law No.1 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 Poland which have been granted admission after 26 May 1976, and in accordance with the laws and regulations of the Republic of Poland.

## **Article IV. Standards of Treatment**

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment according to their applicable laws and regulations.

2. Neither Contracting Party shall in its territory subject investments effected by, and income accruing to, investors of the other Contracting Party to treatment less favourable than that which it accords to investments effected by, and income accruing to investors of any third State.

3. Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, use, enjoyment or disposal of their investment, 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.

4. The treatment mentioned above shall not apply to any advantage or privilege accorded to investors of a third State by either Contracting Party based on the membership of that Contracting Party in a customs union, common market, free trade zone, economic multilateral or international agreement, or based on an agreement concluded between that Contracting Party and a third State on avoidance of double taxation or based on cross-border trade arrangement.

5. If provisions contained in the legislation of either Contracting Party entitle the investors to the treatment more favourable than is provided by the present Agreement, those provisions shall prevail over the terms set forth by this Agreement.

## **Article V. Compensation for Damages or Losses**

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 restitutions, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own nationals or companies or to investors of any third State, whichever is the most favourable.

## **Article VI. Expropriation**

1. Investment of nationals or companies of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal needs of the expropriating Contracting Party and against full, prompt and effective compensation.

Such compensation shall amount to the market value of the investment expropriated prior to the moment in which the decision to expropriate is announced or made public. Compensation shall be made without undue delay, effectively reliable and freely transferable. The legality of any expropriation and its procedures, the amount and the method of payment of compensation shall be subject to review by due process of law in accordance with the laws and regulations of the expropriating Contracting Party.

2. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraph 1 of this Article are applied to the extent necessary to guarantee the compensation provided for in that paragraph to the owners of these shares. paragraph 1 of this Article are applied to the extent necessary to guarantee the compensation provided for in that paragraph to the owners of these shares.

## **Article VII. Repatriation of Investment**

1. . Either Contracting Party shall, subject to and to the extent permitted by its laws and regulations, in respect to investment by investors of the other Contracting Party, grant to those investors without unreasonable delay and after they have complied with all their tax obligations, the transfer of:

- a. Capital and additional capital amounts used to maintain and increase investments;
- b. Net operating profits including dividends and interests in proportion to the share-holding of the foreign participant;
- c. Repayment of any loan and the relevant interest thereof, as far as it is related to the investment;
- d. Payment of royalties and services fees as far as it is related to the investment;
- e. Proceeds from sales of shares owned by the foreign shareholders;
- f. Compensation for damages or losses;
- g. Compensation for expropriation;
- h. Proceeds received by investor in case of liquidation;
- i. The earnings of nationals of one Contracting Party who are allowed to work in connection with investment in the territory of the other Contracting Party.

2. To the extent investor of either Contracting Party has not made another arrangement with the appropriate authorities of the other Contracting Party in whose territory the investment is situated, currency transfer made pursuant to paragraph 1 of this Article shall be permitted in the currency of the original investment or in any other freely convertible currency. Such transfer shall be made at the prevailing rate of exchange on the date of transfer with respect to current transaction in the currency to be transferred. paragraph 1 of this Article shall be permitted in the currency of the original investment or in any other freely convertible currency. Such transfer shall be made at the prevailing rate of exchange on the date of transfer with respect to current transaction in the currency to be transferred.

3. Notwithstanding the preceding paragraphs, either Contracting Party may maintain laws and regulations requiring reports of currency transfers.

## **Article VIII. Subrogation**

In case one Contracting Party or any of its designated agency has granted any guarantee against non-commercial risks in respect of an investment by its investor in the territory of the other Contracting Party and has made payment to such investor under that guarantee, the other Contracting Party shall recognize the transfer of the rights of such investor to the former Contracting Party or any of its designated agency. The other Contracting Party shall be entitled to set off taxes and other public charges due and payable by the investor. The subrogation of the latter shall not exceed the original rights of such investor. As regards the transfer of payments to be made to the other Contracting Party by virtue of such subrogation, Article VI and VII shall apply respectively.

## **Article IX. Settlement of Dispute between Investors and the Contracting Parties**

1. Any dispute arising between a Contracting Party and the investor of the other, shall be settled as amicably as possible.
2. If such dispute cannot be settled within six months from the date either Party requested amicable settlement, it shall, upon request of the investor, be submitted to one of the following:
  - a. A Contracting Party's court at all instances having territorial jurisdiction;
  - b. ICSID in case both Contracting Parties have become parties to the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States;
  - c. The ad hoc arbitral tribunal established under the arbitration rules of procedure of the United Nations Commission for International Trade Law.
3. While arbitration of judicial proceedings instituted for the settlement of such a dispute are in progress, both Contracting Parties shall refrain from any intervention.

## **Article X. Settlement of Dispute between the Contracting Parties Concerning Interpretation and Application of the Agreement**

1. Disputes concerning the interpretation or implementation of this Agreement shall be settled amicably through diplomatic negotiation between the Contracting Parties.
2. . If a dispute between the Contracting Parties cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.
3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.
4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.
5. The tribunal shall determine its own procedure. The arbitral tribunal shall reach its decisions by a majority of votes. Such decision shall be binding of both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of cost shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties.

## **Article XI. Application of other Provisions**

Whenever any issue is governed by this Agreement and by any other agreement, to which both are parties, the provisions that are more favourable to investors shall be applied.

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

1. This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have informed each other in writing that their constitutional requirements for entry into force of this Agreement have been fulfilled. It shall remain in force for a period of ten years and shall continue in force thereafter for another period of ten years and so forth unless denounced in writing by either Contracting Party one year before its expiration.
2. In respect of investments made prior to the date of termination of the present Agreement, the provisions of Article I to XI shall continue to be effective for a further period of ten years from the date of termination of the present Agreement.

DONE in duplicate at Warsaw on October 6, 1992 in Polish, Indonesian and English languages. The three texts are equally authentic. If there is any dispute concerning the interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF POLAND

JERZY ZDRZALKA

Secretary of State, Ministry of Finance

FOR THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

WISBER LOEIS

Director General for Foreign Economic Relations, Department of Foreign Affairs