

AGREEMENT BETWEEN THE KINGDOM OF BELGIUM AND THE REPUBLIC OF INDONESIA ON THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Kingdom of Belgium and the Republic of Indonesia,

Desiring to reinforce economic co-operation between both States, and to intensify co-operation between private enterprises, in order to stimulate economic initiatives;

With the purpose of creating favourable conditions for investments by nationals or legal persons of either State in the territory of the other State;

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

Have agreed as follows:

Article 1.

1. Each Contracting Party shall in its territory promote as far as possible the investment of capital by nationals or legal persons of the other Contracting Party and admit such investment in accordance with its legislation and administrative practice. It shall in any case accord such investments fair and equitable treatment.
2. Investments made in accordance with the laws and regulations of either Contracting Party within the area of application of that Party's legal system by nationals or legal persons of the other Contracting Party, shall enjoy the full protection of the present Agreement. To the extent that an admission procedure is required for making an investment, such an investment shall enjoy this protection as from the date of the granting of the admission.
3. The protection guaranteed by paragraphs 1 and 2 of this article shall at least be equal to that enjoyed by the nationals of any third State and may in no case be less favourable than that recognized by international law.

Article 2.

1. Each Contracting Party shall admit in its territory investments by nationals or legal persons of the other Contracting Party in accordance with its legislation and shall encourage such investments.
2. In particular, each Contracting Party shall authorize the conclusion and execution of licencing contracts and of contracts relating to commercial, administrative or technical assistance, in so far those activities are connected within investments as mentioned in paragraph 1.
3. To the investments of nationals or legal persons of either Contracting Party in the territory of the other Contracting Party shall be accorded by such other Party, a treatment no less favourable than that which it accords in its territory to any similar investment owned 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.

Article 3.

The term "investments" shall comprise every direct or indirect contribution of capital and any other kind of assets, invested or reinvested in enterprises in the field of agriculture, industry, mining, forestry, communications and tourism.

The following shall more particularly, though not exclusively, be considered as investments within the meaning of the present Agreement: (a) Movable and immovable property as well as any other rights in rem such as mortgages, pledges,

usufructs and similar rights;

(b) Shares or other types of holding, majority or minority;

(c) Debts and rights to any performance having an economic value;

(d) Copyrights, marks, patents, technical processes, trade names, trade marks and good will;

(e) Concessions under public law, including concessions to search for, extraction or exploit natural resources.

Article 4.

Each Contracting Party recognizes, as regards the investments or goods, rights and interests, connected with such investments, situated in its territory which belong to nationals or legal persons of the other Contracting Party, the principle of the freedom of transfer, in favour of such national or legal persons or their beneficiaries, of:

— The net profits, interests, dividends, royalties, depreciation of capital assets and any current income, accruing from investments activities to nationals or legal persons of the other Contracting Party;

— The proceeds of the total or partial liquidation of any investment, including possible increases in or additions to these investments, made by nationals or legal persons of the other Contracting Party;

— An appropriate portion of the earning of nationals or legal persons of a Contracting Party who are authorized to work in the territory of the other Contracting Party;

— Funds in repayments of loans which the Contracting Parties have recognized as investments made by nationals or legal persons of the other Contracting Party, to the country of residence of these nationals or legal persons and in the currency thereof.

Each Contracting Party shall issue the authorisations required to ensure that the transfer referred to in the preceding paragraph of this article can be effected without undue delay and any fees or charges other than the usual bank charges. This treatment may not be less favourable than that accorded to the nationals or legal persons of a third State who are in a similar situation.

Article 5.

The nationals or legal persons of one Contracting Party may not be deprived, either directly or indirectly, of the property or enjoyment of their investments or goods, rights and interests connected with such investments, situated in the territory of the other Contracting Party, unless the following conditions are complied with:

(a) The measures are taken in the public interest and under due process of law in accordance with international law;

(b) The measures are neither discriminatory nor contrary to a specific engagement;

(c) The measures are accompanied by provisions for the payment of just compensation.

The amount of such compensation shall represent the actual value of the affected goods on the date on which the measure was taken. It shall be paid to the person entitled thereto and shall be freely transferable, without undue delay. The nationals or legal persons of either Contracting Party shall be accorded, in every case, in the territory of the other Contracting Party, a treatment no less favourable than that enjoyed by the nationals of any third State and in no case less favourable than that recognized by international law.

Article 6.

Nationals or legal persons of either Contracting Party who suffer losses in relation to approved investments owing to revolts, riots, armed conflicts or revolutions, in the territory of the other Contracting Party, shall be accorded by this Party, treatment no less favourable than that accorded to the nationals or legal persons of the latter Party or of any third State, as regards restitutions, indemnifications, compensation or other similar valuable consideration.

Such payments shall be freely transferable.

Article 7.

1. The transfers referred to in articles 4, 5 and 6 shall be effected at the rates of exchange applicable on the date of transfer pursuant to the exchange regulations in force for the various classes of transactions.

2. These rates shall in no case be less favourable than those accorded to the nationals or legal persons of third countries, in particular under specific undertakings laid down in agreements or arrangements, concluded in the matter of protection of investments.

Article 8.

Where a matter is governed by both the present Agreement and another international agreement binding on the Contracting Parties, nothing in this Agreement shall prevent a national or a legal person of one Contracting Party from benefiting by the provisions most favourable to him.

Article 9.

The protection accorded to investors by the provisions of the present Agreement shall apply:

(a) In the territory of the Republic of Indonesia only to investments which have been approved by the Government of the Republic of Indonesia pursuant to the stipulations contained in the Foreign Investment law No. 1 of 1967 or other relevant laws and regulations of the Republic of Indonesia;

(b) In the territory of the Kingdom of Belgium only to investments which have been made consistent with the relevant laws and regulations of the Kingdom of Belgium.

Article 10.

Each Contracting Party hereby irrevocably and anticipatory gives its consent to submit to conciliation and arbitration any dispute relating to a measure contrary to this Agreement, pursuant to the Convention of Washington of 18 March 1965, at the initiative of a national or legal person of the other Contracting Party, who considers himself to have been affected by such a measure,

This consent implies renunciation of the requirement that the internal administrative or judicial resorts should be exhausted.

Article 11.

In the event of a dispute arising between the Contracting Parties as regards the interpretation or implementation of this Agreement, and if such dispute cannot be satisfactorily settled through the diplomatic channels within a six months period, it shall be submitted upon the request of either Contracting Party to an arbitral tribunal composed of three members.

Each Party shall appoint one arbitrator. The two arbitrators thus appointed shall appoint a third arbitrator who is not a national of either Contracting Party. If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party, the arbitrator shall be appointed, at the request of the latter Party, by the President or Vice President of the International Court of Justice. If within two months following their appointment the two arbitrators are unable to reach agreement on the choice of the third arbitrator, the latter shall be appointed at the request of either Party, by the President or Vice President of the International Court of Justice. The Tribunal shall take its decisions in conformity with the principles of law. Before rendering its decision, it may at any stage of the proceedings, propose to the Parties that the dispute should be settled amicably. If the Parties reach agreement, the Tribunal shall decide. Unless the Parties decide otherwise, the Tribunal shall determine its own procedure.

Article 12.

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 the Agreement have been fulfilled, and shall remain binding for a period of 15 years.

2. Unless either of the Contracting Parties shall have given notice of termination 12 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 term of 15 years.

Article 13.

In case of termination of the present Agreement the provisions thereof shall continue to be effective for a period of validity of contracts concluded between the Contracting Party and the investor of the other Contracting Party prior to the notification of termination of the present Agreement.

Article 14.

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 Djakarta in duplicate, in the English language, the fifteenth day of January 1970.

For the Government of the Kingdom of Belgium:

[Signed]

H. FAYAT

For the Government of the Republic of Indonesia:

[Signed]

A. MALIK

At the time of signing the Agreement between the Government of the Kingdom of Belgium and the Government of the Republic of Indonesia concerning the encouragement and the reciprocal protection of investments, the undersigned plenipotentiaries have in addition agreed on the following understanding which shall be regarded as an integral part of the said Agreement:

Re article 2 paragraph 3.

For the purpose of protecting the Indonesian national economy, the Government of the Republic of Indonesia may grant some facilities to Indonesian concerns which do not fully apply to Belgian concerns, without prejudice to the principle that Belgian investment shall be accorded a treatment no less favourable than that which is accorded to nationals or legal persons of third States.

Done at Djakarta on January 15, 1970.

For the Government of the Kingdom of Belgium:

[Signed]

H. FAYAT

For the Government of the Republic of Indonesia:

[Signed]

A. MALIK