

AGREEMENT BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF INDONESIA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

THE FEDERAL REPUBLIC OF GERMANY and THE REPUBLIC OF INDONESIA

DESIRING to intensify economic cooperation between both States,

INTENDING to create favourable conditions for investments by nationals and companies of either State in the territory of the other State, and

RECOGNIZING that encouragement and contractual protection of such investments are apt to stimulate private business initiative and to increase the prosperity of both nations,

HAVE agreed as follows:

Article 1.

For the purpose of this Agreement:

(1) (1) The term "investment" shall comprise every kind of asset and more particularly, though not exclusively:

- a) Movable and immovable property as well as any other rights in rem, such as mortgage, lien, pledge, usufruct and similar rights;
- b) Shares of companies or other kinds of interest;
- c) Claims to money or to any performance having an economic value;
- d) Copyrights, industrial property rights, technical processes, tradenames, and goodwill; and
- e) Business concessions under public law, including concessions regarding the prospecting for, or the extraction or winning of, natural resources,

Any alteration of the form in which assets are invested shall not affect classification as investment, provided that such alteration is not contrary to the admission, if any, granted in respect of the assets originally invested.

(2) The term "returns" shall mean the amounts derived from an investment as profit or interest for a specific period.

(3) The term "nationals" shall mean:

- a) In respect of the Federal Republic of Germany, Germans within the meaning of the Basic Law for the Federal Republic of Germany, and
- b) In respect of the Republic of Indonesia, a person who is a citizen of the Republic of Indonesia according to its Constitution and the Law on Nationality.

(4) The term "companies" shall mean:

- a) In respect of the Federal Republic of Germany, any juridical person as well as any commercial company or other company or association with or without legal personality, having its seat in the territory of the Federal Republic of Germany and lawfully existing consistent with legal provisions irrespective of whether the liability of its partners, associates or members is limited or unlimited and whether or not its activities are directed at profit, and
- 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 persons lawfully constituted in accordance with its legislation.

Article 2.

(1) Each Contracting Party shall in its territory promote as far as possible the investment of capital by nationals or companies of the other Contracting Party and admit such investments in accordance with its legislation and administrative practice. It shall in any case accord such investment 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 companies 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 investment shall enjoy this protection as from the date of the granting of the admission.

Article 3.

(1) Investments by nationals or companies of either Contracting Party shall enjoy full protection as well as security in the territory of the other Contracting Party.

(2) Investments by nationals or companies of either Contracting Party shall not be expropriated in the territory of the other Contracting Party except for the public benefit and against compensation. Such compensation shall represent the equivalent of the investment expropriated; it shall be actually realizable, freely transferable, and shall be made without undue delay. Provision shall have been made in an appropriate manner at or prior to the time of expropriation for the determination and the giving of such compensation. The legality of any such expropriation and the amount of compensation shall be subject to review by due process of law.

(3) Nationals or companies of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, or revolt, shall be accorded treatment no less favourable by such other Contracting Party than that Party accords to its own nationals or companies, as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

(4) Nationals or companies of either Contracting Party shall enjoy most-favoured-nation treatment in the territory of the other Contracting Party in respect of the matters provided for in the present Article.

Article 4.

Either Contracting Party shall in respect of investment guarantee to nationals or companies of the other Contracting Party the free transfer of the capital, of the returns from it and, in the event of liquidation, of the proceeds from such liquidation.

Article 5.

If either Contracting Party makes payment to any of its nationals or companies under a guarantee it has assumed in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 11, recognize the assignment, whether under a law or pursuant to a legal transaction, of any right or claim from such national or company to the former Contracting Party as well as the subrogation of that Contracting Party to any such right or claim, which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments to be made to the Contracting Party concerned by virtue of such assignment, paragraphs 2 and 3 of Article 3 as well as Article 4 shall apply *mutatis mutandis*.

Article 6.

(1) To the extent that those concerned have not made another arrangement admitted by the appropriate agencies of the Contracting Party in whose territory the investment is situated, transfers under paragraphs 2 or 3 of Article 3, under Article 4 or Article 5 shall be made without undue delay and at the rate of exchange effective for current transactions on the day the transfer is made. Article 5 shall be made without undue delay and at the rate of exchange effective for current transactions on the day the transfer is made.

(2) The rate of exchange effective for current transactions shall be based on the par value agreed with the International Monetary Fund and shall lie within the margins above or below parity admitted under section 3 of Article IV of the Articles of Agreement of the International Monetary Fund.

(3) If at the date of transfer no rate of exchange within the meaning of paragraph 2 above exists in respect of either Contracting Party, the official rate fixed by such Contracting Party for its currency in relation to the US Dollar or to another freely convertible currency or to gold shall be applied. If no such rate has been fixed, the appropriate agencies of the Contracting Party in whose territory the investment is situated shall admit a rate of exchange that is fair and equitable.

Article 7.

(1) If the legislation of either Contracting Party or international obligations 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 nationals or companies 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.

(2) Either Contracting Party shall observe any other obligation it may have entered into with regard to investments in its territory by nationals or companies of the other Contracting Party.

Article 8.

(1) The present Agreement shall also apply to investments made prior to entry into force by nationals or companies of the Republic of Indonesia in the territory of the Federal Republic of Germany consistent with the latter's legislation.

(2) In respect of the Republic of Indonesia the present Agreement shall apply to investments made prior to its entry into force by nationals or companies of the Federal Republic of Germany only if a document of admission is granted on application. The Government of the Republic of Indonesia shall accord sympathetic consideration to such applications.

(3) This provision shall not affect the Agreement of 27 February 1953 on German External Debts.

Article 9.

(1) Except for the stipulations made in No. 6 b) of the Protocol annexed hereto neither Contracting Party shall in its territory subject investments owned or controlled by nationals or companies of the other Contracting Party, to treatment less favourable than it accords to investments of its own nationals or companies or to investments of nationals or companies of any third State.

(2) Except for the stipulations made in No. 6 b) of the Protocol annexed hereto neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their activity in connexion with investments, to treatment less favourable than it accords to its own nationals or companies or to nationals or companies of any third State.

Article 10.

Either Contracting Party shall grant national treatment within the framework of the present Agreement in consideration of the fact that national treatment in like matters is also granted by the other Contracting Party.

Article 11.

(1) Disputes concerning the interpretation or application of the present Agreement should, if possible, be settled by the Governments of the two Contracting Parties.

(2) If a dispute cannot thus be settled, it shall upon request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such arbitral tribunal shall be constituted for each individual case as follows: Each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as their chairman to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within two months, and such chairman within three months, from the date on which either Contracting Party has informed the other Contracting Party that it wants to submit the dispute to an arbitral tribunal.

(4) If the periods specified in paragraph 3 above have not been observed, either Contracting Party may, in the absence of any relevant agreement, invite the President of the International Court of Justice to make the 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 should 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 should make the necessary appointments.

(5) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding. Each Contracting Party shall bear the cost of its own member and of its counsel in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal may make a different regulation concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 12.

The provisions of the present Agreement shall remain in force also in the event of a conflict arising between the Contracting Parties, without prejudice to the right of taking such temporary measures as are permitted under the general rules of international law. Measures of this kind shall be repealed not later than on the date of the actual termination of the conflict, irrespective of whether or not diplomatic relations have been re-established.

Article 13.

With the exception of the provisions in paragraph 7 of the Protocol, referring to air transport, the present Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Republic of Indonesia within three months from the entry into force of the present Agreement.

Article 14.

(1) The present Agreement shall be ratified; the instruments of ratification shall be exchanged as soon as possible in Bonn.

(2) The present Agreement shall enter into force one month after the day of exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall continue in force thereafter for an unlimited period except if denounced in writing by either Contracting Party one year before its expiration. After the expiry of the period of ten years the present Agreement may be denounced at any time by either Contracting Party giving one year's notice.

(3) In respect of investments made prior to the date of termination of the present Agreement the provisions of Articles 1 to 13 shall continue to be effective for a further period of twenty years from the date of termination of the Agreement.

DONE at Djakarta on November 8, 1968.

In six originals, two each in the German, Indonesian and English languages. In the event of a divergence between any of the texts of this Agreement the English text shall prevail.

For the Government of the Federal Republic of Germany

Bassler

German Ambassador

For the Government of the Republic of Indonesia

Malik

Minister of Foreign Affairs

PROTOCOL

At the time of Signing the Agreement concerning the Encouragement and Reciprocal Protection of Investments concluded between the Federal Republic of Germany and the Republic of Indonesia, the undersigned plenipotentiaries have, in addition, agreed on the following provisions which shall be regarded as an integral part of the said Agreement:

(1)

a) Returns from an investment, as well as returns from reinvested returns, shall enjoy the same protection as the original

investment.

b) Without prejudice to any other method of determining nationality, any person in possession of a national passport issued by the appropriate authorities of either Contracting Party shall be deemed to be a national of that Party.

(2) In respect of the Republic of Indonesia the admission within the meaning of paragraph 2 of Article 2 is granted in form of a document of admission by the relevant Ministry of the Republic of Indonesia in accordance with its legislation and administrative practice.

(3) The provisions of paragraph (2) of Article 3 shall also apply to the transfer of an investment to public ownership, to the subjection of an investment to public control or to similar interventions by public authorities. Expropriation shall mean the taking away or restricting of any property right which in itself or in conjunction with other rights constitutes an investment.

(4) Liquidation within the meaning of Article 3 shall be deemed to include any disposal effected for the purpose of completely or partly giving up the investment concerned.

(5) A transfer shall be deemed to have been made "without undue delay" within the meaning of paragraph 1 of Article 6 if made within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the relevant request has been submitted and may on no account exceed two months.

(6)

a) The following shall more particularly though not exclusively, be deemed "activity" within the meaning of paragraph 2 of Article 9: the management, maintenance, use and enjoyment of an investment. The following shall in particular, be deemed "treatment less favourable" within the meaning of paragraph 2 of Article 9: restricting the purchase of raw or auxiliary materials, of power or fuel or of means of production or operation of any kind, impeding the marketing of products inside or outside the country, as well as any other measures having similar effects. Measures that have to be taken for reasons of public security and order, public health or morality shall not be deemed "treatment less favourable" within the meaning of Article 9.

b) In derogation of the national treatment provided for in Article 9 of the present Agreement,

aa) Existing legal provisions which preclude the acquisition of landed property by aliens shall remain unaffected.

bb) Certain taxes, charges or levies (of a discriminatory nature) imposed by lower governmental agencies and existing before January 1, 1967, may continue to be levied with the understanding that the Government of Indonesia will work towards their abolishment to the best of its ability and in the shortest possible time.

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 investment of capital by companies and nationals of the Federal Republic of Germany in similar economic activities.

c) Article 9 shall not apply to entry, sojourn, and activity as an employee.

(7) Whenever goods or persons connected with the making of investments are to be transported, either Contracting party shall neither exclude nor hinder transportation enterprises of the other Contracting Party and shall issue permits if required to carry out such transports.

This includes the transportation of:

a) Goods directly intended for an investment within the meaning of the present Agreement or acquired in the territory of either Contracting Party or of any third State by or on behalf of an enterprise in which assets within the meaning of the present Agreement are invested;

b) Persons travelling in connection with the making of investments.

DONE at Djakarta on November 8, 1968.

In six originals, two each in the German, Indonesian and English languages. In the event of a divergence between any of the texts of this Agreement the English text shall prevail.

For the Government of the Federal Republic of Germany

Bassler

German Ambassador

For the Government of the Republic of Indonesia

Malik

Minister of Foreign Affairs

EXCHANGE OF LETTERS

No. 1 Mr. Ambassador,

Intending to facilitate and promote the making and developing of investments by German nationals or companies in the Republic of Indonesia the Government of the Republic of Indonesia will grant, to the extent specified in the document of admission relating to such investments and in accordance with the procedure laid down under its law and legislative and administrative regulations, the necessary permits to German nationals who in connexion with investments by German nationals or companies desire to enter and stay in the Republic of Indonesia and to carry on an activity there as an employee, except if reasons of public order and security, of public health or morality may warrant otherwise.

Accept, Mr. Ambassador, the expression of my highest consideration.

Malik

The Ambassador of the Federal Republic of Germany

Mr. Hilmar Bassler

Djakarta

The Minister of Foreign Affairs of the Republic of Indonesia

Djakarta, November 8, 1968

No. 2 Mr. Ambassador,

I have the honour to inform you that the Indonesian Government will endeavour to ensure that the prerequisites for the entry into force of the Treaty, signed today, between the Republic of Indonesia and the Federal Republic of Germany concerning the Encouragement and Reciprocal Protection of Investments are fulfilled as soon as possible.

The Government of the Republic of Indonesia will also provisionally apply as from the date of signature of the said Treaty the provisions thereof to nationals and companies of the Federal Republic of Germany in order to encourage such nationals and companies to make investments in the territory of the Republic of Indonesia prior to the entry into force of the Treaty.

Accept, Mr. Ambassador, the expression of my highest consideration.

The Ambassador of the Federal Republic of Germany

Mr. Hilmar Bassler

Djakarta