

# **AGREEMENT ON PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENT BETWEEN THE REPUBLIC OF INDONESIA AND THE GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA**

THE REPUBLIC OF INDONESIA AND THE GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA referred to as the "Contracting Parties"

RECOGNIZING the need to protect the investments of the investors of the Contracting Parties on the territory of the other Contracting Party on a non discriminatory basis.

DESIRING to promote greater economic cooperation between them with respect to investments by investors of one Contracting Party in the territory of the other Contracting Party

AGREEING that a state framework for investment will contribute to increasing the affective utilization of resources

RECOGNIZING that pursuant to the prevailing laws and regulations of the Contracting Parties and taking into account the provisions of this Agreement, both Parties resolve to conclude an agreement concerning the promotion and protection of investments.

HAYE AGREED AS FOLLOWS

## **Article 1. Definitions**

For the purposes of this Agreement

1. The term "investments" refers to every kind of property or asset, including the following, invested by investors of one Contracting Party in the territory fo the other Contracting Party in accordance with the laws and regulations of the other Contracting Party (hereafter referred to as the Host Contracting Party

a) moveable and immovable property as well as rights related thereto;

b) shares or any kind of participation in companies

c) claims, to money or to any performance having financial value;

d) Intellectual property rights, including copyrights, patents, utility-model or simple patents, industrial designs, trademarks, trade-names trade and business secrets technical process, know how, goodwill, plant variety rights, indications of source or geographical indications and layout design of integrated circuits;

e) concessions conferred by law, by an administrative act or under a contract by a competent authority, including concessions to search for, develop, extract or exploit natural resources.

Investment does not include claims to money arising solely from:

(i) Commercial contracts, which do not constitute an investment as described above, for the sale of goods or services by investors in the territory of a Contracting Party to nationals or companies in the territory of the other Contracting Party, or

(ii) Credits granted in relation with this kind of commercial contracts

Any change in the legal form in which assets are invested or reinvested does not affect their character as investments

2. The term "Investors" refers to the following persons who invest in the territory of the other Contracting Party within the framework of this Agreement:

a) Natural persons who according to the laws of either Contracting Party, have the nationality of that Contracting Party;

b) Legal persons of either Contracting Party which are established under the laws of that Contracting Party and their headquarters and their real economic activities are located in the territory of that Contracting Party.

3. The terms "returns" refers to the amounts legally yielded by an investment and shall include in particular, though not exclusively, profits, interests, capital gains, dividends, royalties and fees

4. The term "territory":

a) with respect to the Republic of Indonesia:

Its territory as defined in its laws including the law of the continental shelf and adjacent seas over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with the provision of the United Nations Convention on the Law of the Sea of 1982

b) With respect to the Great Socialist People's Libyan Arab Jamahiriya means all the lands which the Great Socialist People's Libyan Arab Jamahiriya has sole jurisdiction thereon, that includes the mere economic area, which includes seabed submarine and the overlying airspace, which are all subject to practice of sovereignty right according to the International law.

5. The term "freely usable currency" means a freely usable currency as determined by the international Monetary Fund under its "Articles of Agreement" and any amendments thereto

## **Article 2. Promotion and Protection of Investments**

Each Contracting Party shall promote investments in its territory by investors of the other Contracting Party and shall admit such Investments in accordance with its laws and regulations

Investments made by investors of one Contracting Party In the territory of the other Contracting Party shall, at all times be accorded fair and equitable treatment and full protection and security.

Except for measures required to maintain public order, neither Contracting Party shall in its territory impair either in law or in practice, by arbitrary or discriminatory measures the management, maintenance, sale, operation, use, possession, expansion, liquidation or other disposal of investments of investors of the other Contracting Party

## **Article 3. National Treatment**

Each Contracting Party shall accord to investments by investors of the other Contracting Party, treatment no less favorable than that which it accords to investments in its territory by its own investors.

Each Contracting Party shall accord to investors of the other Contracting Party treatment no less favorable than that it accords to its own investors.

## **Article 4. Most Favoured Nation**

Each Contracting Party shall accord to investments by investors of the other Contracting Party, treatment no less favorable than that which it accords to investments in its territory of investors of a third State.

Each Contracting Party shall accord to Investor of the other Contracting Party, treatment no less favorable than that which accords to investors of a third State.

No provision of this Agreement shall be construed as to oblige one Contracting Party to extend to the investors of the other Contracting Party and to their investment the present or future benefits of any treatment, preference or privilege resulting from:

a. Any membership in a free trade area, customs union, common market, economic community or any multilateral or regional agreement on investment.

b. any international agreement, international arrangement or domestic legislation regarding taxation.

## **Article 5. Expropriation**

1.

Each Contracting Party undertakes not to adopt any measure of expropriation or nationalization or any other measure having the effect of dispossessing the investors or the other Contracting Party of their investments in its territory

2. If reasons of public purpose require a derogation from the provisions of paragraph 1, the measures shall be;

a) Taken under due process of law,

b) non discriminatory; and

c) accompanied by provisions for the payment of an adequate, effective and prompt compensation in accordance with paragraphs 3 and 4.

4. Compensation shall

a. Be paid without delay. In case of delay, any exchange rate loss arising from this delay shall be borne by the host country.

b. Be equivalent to the fair market value of the expropriated investment immediately before the expropriation occurred. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier.

c. be paid and made freely transferable to the country designated by the claimants concerned and in the currency of the country of which the claimants are nationals or in any freely usable currency accepted by claimants.

d. Include interest at a commercial rate established on a market basis for the currency of payment from the date of expropriation until the date of actual payment.

5. An investor of a Contracting Party which claims to be affected by expropriation by the other Contracting Party shall have the right to prompt review of its case, including the valuation of its investment and the payment of compensation in accordance with the provision of this Article, by a judicial authority or another competent and independent authority or the latter Contracting Party.

## **Article 6. Compensation for Losses**

1. Investors or one contracting Party, whose investments in the territory at the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, civil disturbance, or any other similar event, or force majeure in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or any other settlement, if any, not less favorable than that which the latter Contracting Party accords to its own investors or investors of any other state, whichever is more favorable to the investors concerned

2. An investor of a Contracting Party who in any of the events referred to in paragraph 1 suffer loss resulting from:

a. A requisitioning of its investment or part thereof by the forces or authorities of the other Contracting Party, or

b. destruction of its investment or part thereof by the forces or authorities of the other Contracting Party, which was not required by the necessity of the situation.

Shall in any case be accorded by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective, with respect to compensation, shall be in accordance with Article 5 paragraph 3 and 4.

## **Article 7. Transfers**

1. Each Contracting Party shall grant to investors of the other Contracting Party the free transfer of all payments relating to an investment, including more particularly

a) Amounts necessary for establishing, maintaining or expanding the investment;

b) amounts necessary for payments under a contract, including amounts necessary for repayment of loans, interest, royalties, management fees and other payments resulting from licenses, franchises, concessions and other similar rights, as well as salaries of expatriate personnel

c) Returns;

d) proceeds from the total or partial liquidation of investments, including capital gains or increases in the invested capital;

e) Compensation paid pursuant to Article 5.

2. The nationals of each Contracting Party who have been authorized to work, in the territory of the other Contracting Party in connection with an investment shall also be permitted to transfer an appropriate portion of their earnings and other remunerations to their country of origin.

3. Transfer shall be made in a freely usable currency at the rate applicable on the day transfers are made to spot transactions in the currency used.

4. Each Contracting Party shall issue the authorizations required to ensure that the transfers can be made without undue delay, with no other expenses than the usual banking costs.

5. Notwithstanding paragraphs 1, 2, 3, and 4, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- a. Bankruptcy, insolvency or the protection of the rights of creditors,
- b. Issuing, trading or dealing in securities;
- c. Criminal or penal offences
- d. The reporting of transfer of currency or other monetary instruments;
- e. Ensuring the satisfaction of judgments in adjudicatory proceedings;
- f. Taxation; or
- g. Severance entitlement of employees.

## **Article 8. Temporary Safeguard Measures**

1. A Party may adopt or maintain measures not conforming with its obligations under Article 3 relating to cross-border capital transactions and Article 7;

- a. In the event of serious balance of payment and external financial difficulties or threat thereof, or
- b. In cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomics management, in particular, monetary and exchange rate policies;

Measures referred to in paragraph 1.

- a. shall be consistent with the Articles of Agreement of the International Monetary Fund as long as the Contracting Party taking the measures is a Party to the said Articles;
- b. Shall not exceed those necessary to deal with the circumstances set out in paragraph 1;
- c. shall be temporarily and shall be eliminated as soon as conditions permit; and
- d. shall be promptly notified to the other Party

3. Nothing this Article shall be regarded as altering the rights enjoyed and obligations undertaken by a Party as a Party of the International Monetary Fund.

## **Article 9. Subrogation**

1. If the investments of an investor of one Contracting Party are insured against noncommercial risks, any subrogation of the insurer or re-insurer to the rights of the said investor pursuant to the terms of such insurance shall be recognized by the other Contracting Party provided however, that the insurer or the re-insurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.

2. The Contracting Party or any Agency shall disclose the coverage of the claims arrangements with its investors to the other Contracting Party at the moment of the exercise of the subrogation rights.

## **Article 10. Applicable Regulations**

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain terms, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favorable than is provided by the present Agreement, such terms shall to the extent that they are more favorable, prevail over the present Agreement.

## **Article 11. Specific Agreement**

1. Investment governed by a specific agreement concluded between one Contracting Party and investors of the other Party shall be covered by the provisions of this Agreement with exception of Article 4 and by those of the specific agreement
2. Each Contracting Party undertakes to ensure at all times that the commitments it has entered into in respect of the investment by investors of the other Contracting Party shall be observed.

## **Article 12. Settlement of Disputes between a Contracting Party and Investor(s) of the other Contracting Party**

1. Any dispute relating to an investment between an investor of one Contracting Party and the other Contracting Party shall be notified in writing by the investor to the other Contracting Party.

As far as possible, the Parties to the dispute shall endeavour to settle the dispute through amicable negotiations.

2. If the dispute cannot be settled within three months from the notification, the dispute shall at the request of the investor concerned, be submitted to:

- a. the competent courts or administrative tribunal of the Contracting Party in whose territory the investment is made; or
- b. arbitration by the International Center for Settlement of investment Disputes (ICSID), established pursuant to the Convention of the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington DC on 18 March 1965 (hereinafter referred to as the "Center"), if the Center is available, in case both Contracting Parties are members to the Centre; or
- c. an ad hoc arbitral tribunal to be established under the Arbitration Rules at the United Nations Commission on International Trade Law (UNCITRAL); or
- d. other ad hoc or institutional procedures established under any arbitration tribunals as mutually agreed by both parties.

Once the investor has submitted the Dispute to the competent court of the host Contracting Party or to one of the arbitration procedures stipulated in paragraphs 2 (b); 2 (c) and 2 (d) of this Article, the choice of the procedure is final.

To this end, each Contracting Party agrees in advance and irrevocably to the settlement of any dispute by this type of arbitration. Such Consent implies that both Parties waive the right to demand that all domestic administrative or judiciary remedies be exhausted.

1. The award shall be final and binding on the both Parties to the disputes and shall be executed in accordance with national law of the Contracting Party in whose territory the award is relied upon by the competent authorities of the Contracting Party, by the date indicated in the award.
2. At any stage of the arbitration proceedings or of the execution of an arbitral award, none of the Contracting Parties involved in a dispute shall be entitled to raise as an objection or as a defense to a claim the fact that the investor who is the opposing party in the dispute has received compensation totally or partly covering the losses pursuant to an insurance policy or to the guarantee provided for in Article 9 of this Agreement.

## **Article 13. Settlement of Disputes between the Contracting Parties**

1. Any disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.
2. If the dispute cannot be settled within six months following the date on which either Contracting Party requested such negotiations, it shall at 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 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 whom on approval by the Contracting Parties shall be appointed chairman of the tribunal.

The Chairman shall be appointed within four months from the date of appointment of the other two members.

4. If the necessary appointment has not been made within the periods specified in paragraph 3 of this Article, either Contracting Party may, in the absence of any other Agreement, invite the President of the International Court of Justice to make any necessary appointment. 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 necessary appointment. If the Vice President is a national of either Contracting Party or if he is also prevented from discharging the function, the member of the International Court of Justice next in seniority that is not a national of any Contracting Party shall be invited to make the necessary appointment. However, the Chairman of Arbitral Tribunal shall be national of a state having diplomatic relations with both Contracting Parties.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own members of the Tribunal and 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 costs shall be borne by one of the two Contracting Parties, and its award shall be binding on both Contracting Parties. The Tribunal shall determine its own procedure.

## **Article 14. Transparency**

1. Each Party shall, to the extent possible, ensure its laws, regulations and administrative rulings of general applications respecting any matter governed by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. Nothing in this Agreement shall require a Contracting Party to furnish or allow access to any confidential or proprietary information, including information concerning particular investors or investments, the disclosure of which would impede law enforcement or be contrary to its laws protecting confidentiality or prejudice legitimate commercial interest of particular investors.

## **Article 15. Application of this Agreement**

The provisions of this Agreement shall not apply to matters of taxation in the territory of either Contracting Party. Such matters shall be governed by the domestic laws of each Contracting Party and the terms of any agreement relating to taxation concluded between the Contracting Parties.

## **Article 16. Consultation and Amendment**

1. Either Contracting Party may request that consultation be held on any matter concerning this Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford opportunity for such consultation.

2. This Agreement may be amended at any time, if deemed necessary, by written approval of both Contracting Parties. The entry into force of this amendment shall be in accordance with the provision of Article 18(1) of the Agreement.

## **Article 17. Previous Investments**

This Agreement shall apply to all investment made by investors of either Contracting Party in the territory of the other Contracting Party, whether made before or after the entry into force of this Agreement, but shall not apply to any dispute concerning an investment that arose or any claim that was settled before its entry into force.

## **Article 18. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force for a period of ten years commencing thirty days after the last date of the receipt of the diplomatic note indicating that the constitutional requirements for entry into force of this Agreement have been fulfilled.

2. Unless notice of termination is given by either Contracting Party at least six months before the expiry of its validity, this Agreement shall be tacitly extended each time for a further period of ten years.

3. Investment made prior to the date of termination of the Agreement shall be covered by the provisions of this Agreement for a period of ten years from the date of termination.

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

DONE at Tripoli on the fourth of April two thousand and nine. In two originals, each in Indonesian, Arabic and English languages, all texts being equally authentic. If there is any divergence concerning the interpretation of this Agreement, the English text shall prevail.

FOR THE REPUBLIC OF INDONESIA

Signed

Mari Elka Pangestu

Minister for Trade

FOR THE GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA

Signed

Mohammad Ali Al-Huege

Secretary of the General People's Committee for Industry, Economic and Trade of the Great Socialist People's Libyan Arab Jamahiriya