

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF DENMARK AND**

## **THE GOVERNMENT OF THE REPUBLIC OF INDONESIA**

### **CONCERNING THE PROMOTION AND PROTECTION OF INVESTMENTS** **Preamble**

The Government of the Kingdom of Denmark and the Government of the Republic of Indonesia, hereinafter referred to as the "Contracting Parties;

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

RECOGNIZING that a fair and equitable treatment of investments will stimulate the flow of private capital between the Contracting Parties, and promote sustainable development;

RECOGNIZING the need to protect investments of the investors of one Contracting Party in the territory of the other Contracting Party on a nondiscriminatory basis;

AGREEING that a stable framework for investment will contribute to increasing the effective utilization of economic resources;

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

HAVE AGREED as follows:

#### **Article 1. Definitions**

For the purpose of this Agreement,

1. The term of "investment" means every kind of asset established or acquired by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party, including in particular, but not exclusively:

- a) Moveable and immovable property or any property rights such as mortgages, liens, pledges, leases and similar rights;
- b) Reinvested returns;
- c) Shares and stocks in and debentures of a company or any other forms of participation in a company;
- d) Claims to money or rights to a performance having a financial value;
- e) Intellectual property rights including but not limited to patents, copyrights, trade marks, geographical indications, industrial designs, layout design of integrated circuits, trade secrets, and rights in plants varieties, as well as business names, technical processes, knowhow and good will;
- f) Concessions conferred by law, by an administrative act or under a contract by a competent authority, including concession to search for, develop, extract or exploit natural resources.

Investments made in the territory of one Contracting Party by any legal entity of that same Contracting Party, but actually

owned by investors of the other Contracting Party, shall likewise be considered as investments of investors of the latter Contracting Party if they have been made in accordance with the laws and regulations of the former Contracting Party.

A change in the form in which assets are invested or reinvested, does not affect their character as investments.

2. The term "returns" means the amounts yielded by an investment and includes in particular, though not exclusively, profit, interest, capital gains, dividends, royalties or fees.

Returns, and in case of reinvestment amounts yielded from the reinvestment, shall be given the same protection as the investment in accordance with the provisions of this Agreement.

3. The term "investor" means:

a) in respect of the Republic of Indonesia

I. Any natural person having the nationality of the Republic of Indonesia; Or

II. Any legal person constituted under the law of the Republic of Indonesia.

b) in respect of the Kingdom of Denmark

I. Any natural person who is a national of the Kingdom of Denmark in accordance with its laws; or

II. Any legal entity such as company, corporation, firm, partnership, business association, institution or organization, incorporated or constituted in accordance with the laws and regulations of the Kingdom of Denmark and having its registered office or central administration or principal place of business within the jurisdiction of the Kingdom of Denmark, and whether or not for profit and whether its liabilities are limited or not.

4. The term "territory" means:

a. With respect to the Republic of Indonesia, its territory as defined in its laws including part of the continental shelf and adjacent seas over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea of 1982.

b. With respect to the Kingdom of Denmark, the territory under its sovereignty as well as maritime zones and continental shelf over which the Kingdom of Denmark exercises sovereign rights or jurisdiction in accordance with its national laws in force and international law.

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

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

2. Each Contracting Party shall in its territory accord to investments and returns of investments of investors of the other Contracting Party fair and equitable treatment and full protection and security, under the provisions of this Agreement.

3. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

## **Article 3. Treatment of Investments**

1. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments once admitted, a treatment no

Less favourable than the treatment it accords to its own investors and their investments with respect to the acquisition, expansion, operation, management, maintenance, use and sale or other disposal of investments.

2. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments, a treatment no less favourable than the treatment it accords to investors of the most favoured nation and to their investments with respect to the establishment, acquisition, expansion, operation, management, maintenance, use and sale or other disposal of investments.

3. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments the better of the treatments required by paragraph 1 and paragraph 2 of this Article, whichever is more favourable to the investors or investments, according to the investors.

4. Neither Contracting Party shall mandate or enforce in its territory measures on investments by investors of the other Contracting Party, concerning purchase of materials, means of production, operation, transport, marketing of its products or similar orders having discriminatory effects.

## **Article 4. Exceptions**

The provisions of this Agreement in relation to the granting of treatment not less favourable than that accorded to the investors of each Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

- a) membership of any existing or future regional economic integration organisation or customs union of which one of the Contracting Parties is or may become a party, or
- b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

## **Article 5. Expropriation and Compensation**

1. Investments of investors of each Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for expropriations made in the public interest, on a basis of non-discrimination, carried out under due process of law, and against prompt, adequate and effective compensation.
2. Such compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation or impending expropriation became known in such a way as to affect the value of the investment (hereinafter referred to as the "valuation date").
3. The investor affected shall have a right to prompt review under the law of the Contracting Party making the expropriation, by a judicial or other competent and independent authority of that Contracting Party, of its case, of the valuation of its investment, and of the payment of compensation, in accordance with the principles set out in paragraph 1 of this Article.
4. Such fair market value shall be calculated in a freely convertible currency on the basis of the market rate of exchange existing for that currency on the valuation date. Compensation shall be paid

Promptly and include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.

5. When a Contracting Party expropriates the assets of a company or an enterprise in its territory, which is incorporated or constituted under its law, and in which investors of the other Contracting Party have an investment, including through shareholding, the provisions of this Article shall apply to ensure prompt, adequate and effective compensation for those investors for any impairment or diminishment of the fair market value of such investment resulting from the expropriation.

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

1. 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 restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever of these standards is the more favourable from the point of view of the investor.
2. Without prejudice to paragraph 1 of this Article, an investor of a Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the area of another Contracting Party resulting from:
  - a) requisitioning of its investment or part thereof by the latter's forces or authorities, or
  - b) destruction of its investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

Shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective.

## **Article 7. Transfer of Capital and Returns**

1. Each Contracting Party shall with respect to Investments in its territory by investors of the Other Contracting Party allow the free transfer Into and out of its territory of:

- a) the initial capital and any additional capital for the maintenance and development of an investment;
- b) the invested capital or the proceeds from the sale or liquidation of all or any part of an investment;
- c) interest, dividends, profits and other returns realised;
- d) payments made for the reimbursement of the credits for investments, and interest due;
- e) payments derived from rights enumerated in Article 1, paragraph 1, (d), of this Agreement;
- f) unspent earnings and other remuneration of personnel engaged from abroad in connection with an investment;
- g) compensation, restitution, indemnification or other settlement pursuant to Articles 5 and 6.

2. Transfers of payments under paragraph 1 of this Article shall, subject to its prevailing laws and regulations, be allowed and effected without delay, and shall be made without restriction in a freely convertible currency.

3. Transfers shall be made at the market rate of exchange existing on the date of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be used will be the most recent exchange rate applied to inward investments.

4. The provisions of the foregoing paragraphs of this article do not prejudice a Contracting Party's exercise in good faith of its international obligations or of its rights and obligations by virtue of its participation or association in a free trade zone, customs union, common market, economic or monetary union or any other form of regional cooperation or integration.

## **Article 8. 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 reinsurer 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 exercising subrogation shall disclose the coverage of the claims arrangements with its investors to the other Contracting Party.

## **Article 9. Settlement of Disputes between a Contracting Party and an Investor**

1. Any dispute arising directly from an investment between one Contracting Party and an investor of the other Contracting Party should be

Settled amicably between the two parties to the dispute, through consultations and negotiations.

2. If any such dispute cannot be settled within six months following the date on which the dispute has been raised by the investor through written notification to the Contracting Party, each Contracting Party hereby consents to the submission of the dispute, at the investor's choice, for resolution by international arbitration to one of the following fora:

- a) the competent courts of the Contracting Party in whose territory the investment is made, or
- b) by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC), or
- c) an ad hoc tribunal set up under Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The appointing authority under the said rules shall be the Secretary General of ICSID, or
- d) the International Centre for Settlement of Investment Disputes (ICSID) for settlement by arbitration under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States provided both Contracting Parties are parties to the said Convention.
- e) any other ad hoc arbitration tribunal agreed by the Parties.

3. For the purpose of this Article and Article 25(2)(b) of the said Washington Convention, any legal person which is constituted in accordance with the legislation of one Contracting Party and which, before a dispute arises, was controlled by an investor of the other Contracting Party, shall

Be treated as a national of the other Contracting Party.

4. Any arbitration under paragraph 2 b) d) of this Article shall, at the request of either party to the dispute, be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (the New York Convention).

5. The consent given by each Contracting Party in paragraph (2) and the submission of the dispute by an investor under the said paragraph shall constitute the written consent and written agreement of the parties to the dispute to its submission for settlement for the purposes of Chapter II of the Washington Convention (Jurisdiction of the Centre) and for the purpose of the Additional Facility Rules, Article 1 of the UNCITRAL Arbitration Rules, the Rules of Arbitration of the ICC and Article II of the New York Convention.

6. In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defence, counterclaim or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received pursuant to an insurance or guarantee contract.

7. Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such award.

## **Article 10. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall, as far as possible, be settled through diplomatic channels.

2. If a dispute according to paragraph 1 of this Article cannot be settled within six (6) months, it shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.

3. Such arbitral tribunal shall be constituted on an ad hoc basis as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as their chairman to be appointed by the two Contracting Parties. Such arbitrators shall be appointed within two (2) months from the date one Contracting Party has informed the other Contracting Party, of its intention to submit the dispute to an arbitral tribunal and the chairman shall be appointed within four (4) months following the appointment of the two arbitrators.

Such an Arbitral Tribunal shall be constituted for each individual case in the following way. Within two (2) 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 four (4) months from the date of appointment of the other two members.

4. If the periods specified in paragraph 3 of this Article are not observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-President or in case of his inability the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.

5. The tribunal shall establish its own rules of procedure.

6. The arbitral tribunal shall reach its decision on the basis of the present Agreement and applicable rules of international law. It shall reach its decision by a majority of votes; the decision shall be final and binding.

7. Each Contracting Party shall bear the costs of its own member and of its legal representation in the arbitration proceedings. The costs of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The tribunal may, however, in its award determine another distribution of costs.

## **Article 11. Consultations**

Each Contracting Party may propose to the other Contracting Party to consult on any matter affecting the application of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and at a time

agreed upon through diplomatic channels.

## **Article 12. Application of this Agreement**

This Agreement shall apply to all investments 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 13. Territorial Extension**

1. This Agreement shall not apply to the Faroe Islands and Greenland.
2. The provisions of this Agreement may be extended to the Faroe Islands and Greenland as may be agreed between the Contracting Parties in an Exchange of Notes.

## **Article 14. Amendments**

This Agreement may be amended at any time, if deemed necessary, by mutual consent of both Contracting Parties and through the same procedure as the original Agreement.

## **Article 15. Entry Into Force, Duration and Termination**

1. The Contracting Parties shall notify each other when the constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force thirty (30) days after the date of that last notification through diplomatic channel.
2. Upon its entry into force, this Agreement substitutes and supersedes the Agreement between the Government of the Kingdom of Denmark and the Government of the Republic of Indonesia concerning the Promotion and Reciprocal Protection of Investments done at Jakarta on the 30th day of January 1968.
3. This Agreement shall remain in force for a period of ten years. It shall remain in force thereafter until either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after the date of such notification.

4. In respect of investments made prior to the date when the notice of termination of this Agreement

Becomes effective, the provisions of Articles 1 to 13 shall remain in force for a further period of ten (10) years from the effective date of termination of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Jakarta on 22 January 2007 in the English language. Both texts being equally authentic.

For the Government of the Kingdom of Denmark For Kongeriget Danmarks Regering Per Stig Møller Per Stig Møller

For the Government of the Republic of Indonesia For Republikken Indonesiens Regering

N. Hassan Wirajuda

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