

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND THE GOVERNMENT OF THE REPUBLIC OF BULGARIA CONCERNING THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Indonesia and the Government of the Republic of Bulgaria, hereinafter referred to as the "Contracting Parties",

Bearing in mind the friendly and co-operative relations existing between the two Countries and their peoples and desiring to develop the economic cooperation between them,

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

Recognizing that the Agreement concerning the Promotion and Protection of such investments will be conducive to the stimulation of investment activities in both Countries;

Have agreed as follows:

Article I. Definitions

For the purposes of this Agreement:

1. The term "investments" shall mean any kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party, in conformity with the laws and regulations of the latter, including, but not exclusively:

- a) movable and immovable property rights as well as other rights such as mortgages, privileges, pledges, guarantees and any other similar rights;
- b) rights derived from shares, bonds or any other form of investment in companies or joint venture in the territory of the other Contracting Party;
- c) outstanding claims to money or to any performance having a financial and economic value;
- d) intellectual property rights, technical processes, goodwill and know-how;
- e) business concessions conferred by law under contract or an administrative act of a competent authority related to investment including concessions to search for, cultivate, extract or exploit natural resources.

A subsequent change of the form in which the investments have been made shall not affect their substance as investments, provided that such a change does not contradict the laws of the Contracting Party, in the territory of which the investments have been made.

2. The term "investor" shall comprise with regard to either Contracting Party:

- (a) natural person having the nationality of one of the Contracting Parties in accordance with its laws and investing in the territory of the other Contracting Party;
- (b) legal person constituted or incorporated in accordance with the laws of one of the Contracting Parties, having its seat in the territory of that Contracting Party and investing in the territory of the other Contracting Party;

3. The term "without delay" shall be deemed to be fulfilled if a transfer is made within such periods as is normally required by international financial practices.

4. The term "returns" shall include all amounts yielded by an investment, such as profits, dividends, interests and other lawful incomes.

5. The term "territory" shall mean:

a) 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 jurisdiction in accordance with the 1982 United Nations Convention on the Law of the Sea.

b) In respect of the Republic of Bulgaria:

The territory under the sovereignty of the Republic of Bulgaria including the territorial sea, as well as the continental shelf and the exclusive economic zone, over which the Republic of Bulgaria exercises sovereign rights and jurisdiction in conformity with international law.

Article II. Promotion and Protection of Investments

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

2. Investments of investors 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.

3. Subject to the laws and regulations of the host Contracting Party relating to the entry, stay, work and movement of key personnel being nationals of the Contracting Party of the investor as well as members of their household, shall be permitted to enter into, remain and leave the territory of the other Contracting Party for the purpose of carrying out activities with the investments in the territory of the latter Contracting Party.

Article III. Treatment of Investments

1. Each Contracting Party shall ensure fair and equitable treatment of the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors.

2. More particularly, each Contracting Party shall accord to such investments treatment which in any case shall not be less favourable than that accorded to investments of investors of any third State.

3. The provisions of paragraph 1 and 2 of this Article shall not be construed as obliging either Contracting Party to extend to the investors of the other Contracting Party the privileges accorded to investors of a third State based on:

a) participation in, or association with, existing or future economic community, customs union, free trade area and other similar institutions, created under an international agreement, or

b) agreements relating to avoidance of double taxation.

4. 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 a regulation, whether general or specific, entitling investments by investors 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.

Article IV. Expropriation

1. Each Contracting Party shall not take any measures of expropriation, nationalization or any other dispossession, having effect equivalent to expropriation or nationalization against the investments of an investor of the other Contracting Party except by virtue of law for especially important state needs provided that this need may not be met in any other way on a non-discriminatory basis and against prompt and adequate compensation.

2. Compensation shall be equivalent to the fair market value of expropriated investment immediately before the expropriatory action was taken or became public known, whichever is earlier; be paid without delay and be freely transferable. Such compensation shall include interest at normal commercial rate from the date of expropriation until the date of payment.

Article V. Compensation for 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 no less favourable than that accorded to investors of any third State as regards, indemnification, compensation or other settlement.

Article VI. Transfers

1. Either Contracting Party shall guarantee within the scope of its laws and regulations in respect to investments by investors of the other Contracting Party grant to those investors without delay, the transfer of:

- a) capital and additional funds used to maintain and increase investment;
- b) returns from the investment;
- c) repayment of loans;
- d) royalties or fees;
- e) the earnings of nationals of the Contracting Party who are allowed to work in connection with investment in the territory of the other Contracting Party;
- f) the proceeds of liquidation and total or partial sale of the investment;
- g) compensation for losses;
- h) compensation for expropriation.

2. Such transfer shall be made in convertible currency at the prevailing rate of exchange on the date of transfer with respect to current transaction in the currency to be transferred.

Article VII. Subrogation

If the investments of an investor of the one Contracting Party are insured against noncommercial risks under a system established by law, any subrogation of the insurer or reinsurer to the rights and obligations 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 and obligations other than the rights and obligations obtained by the investor.

Article VIII. Settlement of Disputes between an Investor and a Contracting Party

1. Any dispute between a Contracting Party and an investor of the other Contracting Party concerning an investment of the latter in the territory of the former, shall be settled amicably through consultations and negotiations.

2. If such a dispute cannot be settled within a period of six months from the date either party to the dispute requested amicable settlement the investor concerned may submit the dispute to:

- a) the competent court of the Contracting Party concerned;
- b) In case of disputes with regard to Articles IV, V and VI of this Agreement the investor concerned may, instead, choose to submit the dispute for settlement by arbitration to:

- An ad-hoc arbitral tribunal to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) or,

The International Centre for Settlement of Investments Disputes (ICSID) set up by Convention of Investment Disputes between States and Nationals of other States done at Washington, March 18th 1965, in case both Contracting Parties become signatories of this Convention.

3. The award shall be final and binding on both parties to the dispute and be enforced in accordance with the domestic laws of the Contracting Party concerned.

Article IX. Settlement of Disputes between the Contracting Parties Concerning

Interpretation and Application of the Agreement

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.
2. If a dispute between the Contracting Parties cannot thus be settled through negotiations 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 three months from 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 is too 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 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 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 costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article X. Applicability of this Agreement

This Agreement shall apply to investments by investors of the Republic of Bulgaria which have been granted admission in the territory of the Republic of Indonesia in accordance with the law No 1 of 1967 on Foreign Investment and any law amending or replacing it, and to investments by investors of the Republic of Indonesia which have been granted admission in the territory of the Republic of Bulgaria in accordance with the Law on Economic Activity of Foreign Persons and on the Protection of Foreign Investments of 1992 and any law amending or replacing it.

Article XI. Consultation and Amendment

1. Either Contracting Party may request that consultation be held on any matter concerning this Agreement. The time and the place to hold these consultations shall be agreed upon through diplomatic channels.
2. This Agreement may be amended at any time if deemed necessary, by mutual consent.

Article XII. Entry Into Force, Duration and Termination

1. The present Agreement shall enter into force three months after the date of the latest notification by any Contracting Party of the accomplishment of its internal procedures of ratification. It shall remain in force 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 this Agreement becomes effective, the provisions of Articles I to XI shall remain in force for a further period of ten years from the date of termination of the present Agreement.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Jakarta on 13th September 2003 in Indonesian, Bulgarian and English languages, the three texts being equally authentic. In case of divergence in the interpretation, the English text shall prevail.

For the Government of the Republic of Indonesia:

Jannes Hutagalung

Deputy Minister for International Economic Cooperation Coordinating Ministry for Economic Affairs

For the Government of the Republic of Bulgaria:

Krassimir Voutev Katev Deputy Minister of Finance