

AGREEMENT ON ECONOMIC COOPERATION BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

The Government of the Kingdom of the Netherlands and the Government of the Republic of Indonesia,

Desirous of encouraging and intensifying economic cooperation between their countries to their mutual benefit,

Intending to create favourable conditions for investments by nationals of either State in the territory of the other State and to encourage such investments,

Have agreed as follows:

Chapter 1. Economic Cooperation

Article 1.

The Contracting Parties undertake, on the principles of reciprocity and mutual benefit, to promote their cooperation in the economic field with a view to developing their respective countries.

Article 2.

The Contracting Parties shall facilitate the intensification of relations in the field of industry, trade, agriculture, maritime affairs, transport and other services between their respective countries to the highest possible extent.

They shall, within the framework of and subject to their national legislation, further cooperation between companies, associations, and other organisations of any kind or subsidiary bodies thereof, connected with their economies, and all their other nationals engaged in economic activities, in order to develop their resources. In particular, they shall promote, with regard to industry, trade, agriculture, maritime affairs, transport and other services, cooperation in:

Applied provisionally from 7 July 1968, the date of signature, and came into force definitively on 17 July 1971, the date the two Contracting Parties notified each other by diplomatic notes that their constitutional requirements had been fulfilled, in accordance with articles 26 and 24, respectively.

The establishment of new enterprises or the extension of existing ones;

The rendering of assistance to or participation in the management of enterprises;

The introduction of new production techniques and the improvement of existing ones;

The exploration for and the exploitation of natural resources;

The supply of know-how and the collaboration in the technical field;

The appointment of agents and/or representatives; and in any other appropriate way.

With regard to the form of cooperation in the activities referred to in the preceding paragraph, the Contracting Parties, without excluding any other form, recognize the importance of joint ventures in which nationals of both States take part.

Article 3.

Each Contracting Party undertakes to facilitate with regard to the other Contracting Party and to the extent permitted by the former Party's legislation:

- a) the holding in its territory by the other Contracting Party and its nationals of economic and commercial exhibitions and displays;
- b) the importation, duty-free, of goods, materials and equipment to be used for such exhibitions and displays, on condition that they are re-exported within a limited period;
- c) the importation, duty-free, of goods, materials and equipment to be used for technical work on behalf of governmental bodies or private enterprises, on condition that they are re-exported within a limited period;
- d) the re-exportation, duty-free, of the goods, materials and equipment referred to in b and c;
- e) the sale of goods, materials and equipment referred to in b and c in the territory where they have been used, subject to the payment of duty.

Chapter II. Investment

Article 4.

For the purposes of this Chapter:

- a) the term nationals includes legal persons established in accordance with the law of a Contracting Party, in the territory of that Contracting Party;
- b) the term legal person includes a legal person established in accordance with the law of the one Contracting Party, in the territory of that Contracting Party in respect of which, because of its being controlled by a national of the other Contracting Party, it has been agreed upon by contract that it should be treated, for the purposes of this Chapter, as a national of the latter Contracting Party.

Article 5.

- (1) Each Contracting Party shall ensure fair and equitable treatment to the investments, goods, rights and interests of nationals of the other Contracting Party and shall not impair, by unjustified or discriminatory measures, the management, maintenance, use, enjoyment or disposal thereof by those nationals.
- (2) More particularly, each Contracting Party shall accord to such investments, goods, rights and interests the same security and protection as it accords either to those of its own nationals or to those of nationals of third States, whichever is more favourable to the investor.

Article 6.

- (1) Each Contracting Party recognizes the principle of the freedom of transfer of:

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

An appropriate portion of the earnings of nationals of a Contracting Party who are authorized to work in the territory of the other Contracting Party;

Funds in repayment of loans which the Contracting Parties have recognized as investments;

To the country of residence of these nationals and in the currency thereof.

- (2) Any authorization to transfer shall be issued, and any transfer shall be carried out, without undue restriction and delay, in conformity with the most favourable relevant rules in force in the territory of the Contracting Party concerned.

Article 7.

Neither Contracting Party shall take any measures depriving, directly or indirectly, nationals of the other Contracting Party of their investments, goods, rights or interests unless the following conditions are complied with:

- a) the measures are taken in the public interest and under due process of law;
- b) the measures are not discriminatory or contrary to any undertaking which the former Contracting Party may have given;
- c) the measures are accompanied by provision for the payment of just compensation. Such compensation shall represent the genuine value of the investments, goods, rights or interests affected, shall be paid without undue delay and shall be transferable to the extent necessary to make it effective for the nationals entitled thereto.

Article 8.

Nationals or corporations of either Contracting Party who suffer losses in relation to approved investments owing to war or other armed conflict, revolution, a state of national emergency, or revolt in the territory of the other Contracting Party, shall be accorded treatment no less favourable than that which the latter Contracting Party accords to its own nationals or corporations or nationals or corporations of third states as regards restitution, indemnification, compensation or other similar valuable consideration. Such payments shall be freely transferable.

Article 9.

The contracting party in the territory of which an investment approved by it has been made, in respect of which investment the other contracting party or a national thereof has granted any financial security against non commercial risks, recognizes the subrogation of the grantor of that security into the rights of the investor as to damages if payment has been made under that security, and to the extent of that payment.

Article 10.

The present Chapter shall apply to investments made in the territory of the one Contracting Party by a national of the other Contracting Party as from January 10, 1967. Similarly, the present Chapter shall apply to goods, rights and interests connected with investments and acquired after the date referred to above.

Article 11.

The Contracting Party in the territory of which a national of the other Contracting Party makes or intends to make an investment, shall assent to any demand on the part of such national and any such national shall comply with any request of the former Contracting Party, to submit, for conciliation or arbitration, to the Centre established by the Convention of Washington of March 18, 1965, any dispute that may arise in connection with the investment.

Chapter III. Taxes, Levies and Charges

Article 12.

For the purposes of this Chapter:

- a) the term nationals used in relation to a Contracting Party means:
 - i) all individuals possessing the nationality of that Contracting Party; and
 - ii) all legal persons, partnerships and associations deriving their status as such from the law in force in the territory of that Contracting Party;
- b) the term residents used in relation to a Contracting Party includes all companies established in the territory of that Contracting Party.

Article 13.

Nationals of the one contracting party shall not be subjected in the territory of the other contracting party to any tax, levy or charge, or any requirement connected therewith which is more burdensome than the taxes, levies and charges, and connected requirements to which nationals of that other Contracting Party are or may be subjected.

Article 14.

Enterprises carried on by residents of the one Contracting Party shall not be subjected in the territory of the other Contracting Party to any tax, levy or charge, or any requirement connected therewith which is more burdensome than the taxes, levies and charges, and connected requirements to which enterprises carried on by residents of that other Contracting Party are or may be subjected.

Article 15.

If in spite of the provisions of Article 13 or Article 14 of the present Agreement nationals of the one Contracting Party, or enterprises carried on by residents of the one Contracting Party would be subjected in the territory of the other Contracting Party to any tax, levy or charge, or any requirement connected therewith which is more burdensome than the taxes, levies and charges, and connected requirements to which nationals of any third State, or enterprises carried on by residents of any third State are or may be subjected, then the first-mentioned nationals or enterprises shall not be subjected in the territory of the other Contracting Party to any tax, levy or charge, or any requirement connected therewith which is more burdensome than the taxes, levies and charges, and connected requirements to which nationals of such third State, or enterprises carried on by residents of such third State are or may be subjected.

Article 16.

Enterprises carried on by companies established in the territory of the one Contracting Party, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more nationals or residents of the other Contracting Party, shall not be subjected in the territory of the first-mentioned Contracting Party to any tax, levy or charge, or any requirement connected therewith which is more burdensome than the taxes, levies and charges, and connected requirements to which similar enterprises carried on by any company established in the territory of the first-mentioned Contracting Party are or may be subjected.

Article 17.

(1) Each Contracting Party is free to accord special tax advantages by virtue of agreements for the avoidance of double taxation.

(2) Each Contracting Party is free, within an economic union, regional or sub-regional, to accord special favourable tax treatment to its own nationals and residents, and to nationals and residents of the other Member-States concerned, if such treatment is established within the framework of that economic union.

Article 18.

Each Contracting Party recognizes the right of the other Contracting Party to require the payment of a fixed amount as a prerequisite for the exploration and exploitation in the field of mining, forestry and fishery in the territory of the latter Contracting Party.

Article 19.

Each Contracting Party recognizes the right of the other Contracting Party to grant exemptions from taxes, levies and charges to certain businesses as a means of stimulating economic development.

Chapter IV. General

Article 20.

The Contracting Parties agree to establish a Committee composed of representatives appointed by their respective Governments.

The Committee shall meet alternately in The Hague and Djakarta at the request of one of the Contracting Parties at least once a year, to discuss any matter pertaining to the implementation of the present Agreement and to consider means of promoting economic cooperation between the Contracting Parties.

The Committee shall therefore keep under review the development of their economic relations both in bilateral and multilateral contexts. It shall moreover make recommendations to the respective Governments when the objectives of this Agreement might be furthered and a fuller measure of economic cooperation might be obtained.

Article 21.

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 of one Contracting Party from benefiting by the provisions most favourable to him.

Article 22.

(1) Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement which is not settled in any other way, shall be submitted, at the request of any party to the dispute, to an arbitral tribunal composed of three members. Each party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator who is not a national of either party.

(2) 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 to make such appointment, the arbitrator shall be appointed, at the request of the latter party, by the President of the International Court of Justice.

(3) If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, the latter shall be appointed, at the request of either party, by the President of the International Court of Justice.

(4) If, in the cases provided for in the second and third paragraph of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either party, the Vice-President shall make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either party, the oldest member of the Court who is not a national of either party shall make the necessary appointments.

(5) The tribunal shall base its decision on the provisions of the present Agreement in conformity with the principles of law. Before the tribunal gives its decision, it may at any stage of the proceedings propose to the parties that the dispute be settled amicably. The foregoing provisions shall not prejudice the power of the arbitral tribunal to decide the dispute *ex aequo et bono* if the parties so agree.

(6) Unless the parties decide otherwise, the tribunal shall determine its own procedure.

(7) The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the parties to the dispute.

Article 23.

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the territory of the Kingdom in Europe, to Surinam and to the Netherlands Antilles, unless the notification from the Government of the Kingdom of the Netherlands provides otherwise.

Article 24.

(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 25.

In case of termination of the present Agreement the provisions relevant to investments shall continue to be effective for the 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 26.

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, this seventh day of July 1968.

For the Government of the Kingdom of the Netherlands: J. Luns

For the Government of the Republic of Indonesia: A. Malik

Protocol

At the time of signing the Agreement on Economic Cooperation between the Government of the Kingdom of the Netherlands and the Government of the Republic of Indonesia, 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 (maritime Affairs)

Whilst recognizing the principle of the free participation of sea-going vessels of whatever nationality in international traffic, the Government of the Republic of Indonesia wishes to make clear that certain temporary measures to further the maritime activities are a consequence of the necessity to develop the Indonesian merchant marine.

Re Article 5

(1) Whilst recognizing the principle that the treatment of Netherlands investments shall in no case be less favourable to the investors than the treatment of its own nationals, the Indonesian Government reserves its position with regard to national treatment of Netherlands investments in view of the present stage of development of the Indonesian national economy.

The Indonesian Government shall endeavour to the best of its ability to assure national treatment of Netherlands investors. However, as a reflection of recent developments, foreign owned and Indonesian owned businesses presently do not share identical rights, the Foreign Capital Investment Law differing from the Domestic Capital Investment Law.

In no case shall treatment of Netherlands investments be less favourable than Law No. 1 of 1967 permits.

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 Netherlands investors engaged in similar economic activities.

(2) With regard to the employment of foreign managerial, commercial or technical staff-personnel in an enterprise, in case such employment is subject to a licence according to the national legislation of the Contracting Party in the territory of which such enterprise will be established or is run, that Contracting Party will adopt a lenient attitude when deciding on applications for such licences, taking into account the importance of a just personnel-policy in the framework of the general management of an enterprise.

Re Articles 10 and 11

The applicability of the obligations laid down in Article 11 shall, in derogation of Article 10, commence on the date of the entry into force of the present Agreement, it being understood that before that date Indonesia shall have ratified the Convention of Washington of March 18, 1965.

In witness whereof, the undersigned Representatives have signed the present Protocol.

Done at Djakarta, in duplicate, in the English language, this seventh day of July 1968.

For the Government of the Kingdom of the Netherlands: J. Luns

For the Government of the Republic of Indonesia: A. Malik

Exchange of letters

I a

The Hague, June 17, 1968

Dear Mr. Thajeb,

With reference to the Agreement on Economic Cooperation between the Republic of Indonesia and the Kingdom of the Netherlands, initialed to-day, I have the honour to request your attention for the following.

During the preparatory talks, relating to the above-mentioned agreement it was explained to me that, although Indonesia is, as the Netherlands, member of the Convention of Paris for the Protection of Industrial Property of March 20, 1883,] no law is in force in Indonesia, which protects inventions. Recently however a project of law on this subject has been introduced with the Indonesian Parliament. Pending the enactment of this law, applications for registration on a provisional basis of patents for inventions can be introduced with the Department of Justice, according to the Publication by the Minister of Justice, dated November 1, 1953. Provisional applications which are duly registered will be granted precedence after the law comes into force. After the entry into force, the registrations will be made public.

I explained to you that the absence of protection of inventions creates a situation of uncertainty which may hamper the application of new inventions or improved techniques by Netherlands investors into Indonesia.

In view thereof I would appreciate it very much if you would draw the attention of the Authorities concerned to the desirability of expediting as much as possible the procedure leading to the coming into force of the above-mentioned law.

Yours sincerely,

VAN OORSCHOT

Mr. Ismael M. Thajeb

Chairman of the Indonesian Delegation

II a

The Hague, June 17, 1968

Dear Dr. van Oorschot,

I have the honour to acknowledge the receipt of your to-days letter, reading as follows:

[See letter I a]

I have the honour to confirm that I will draw the attention of my Authorities to the desirability of expediting as much as possible the procedure leading to the coming into force of the above-mentioned law.

Yours sincerely,

Ismael M. Thajeb

Dr. W. P. H. van Oorschot Chairman of the Netherlands Delegation

I b

The Hague, June 17, 1968

Dear Mr. Thajeb,

In connection with the discussions on the Agreement on Economic Cooperation between the Republic of Indonesia and the Kingdom of the Netherlands, which we initialed today, and with special reference to Article 2 of this Agreement dealing amongst others with the promotion of cooperation with regard to the appointment of agents and/or representatives, I would like to request your attention for the following.

As the situation is at present, the designation of agents in Indonesia by foreign, including Netherlands shipping companies, is subject to governmental regulations which limit the choice amongst five Indonesian shipping companies. Furthermore, the implementation of this regulation, which in itself is considered restrictive by the Netherlands shipping companies, provides that a foreign shipping company, having chosen one of the five officially designated agents, is bound to use that same agent in all ports of Indonesia.

The Netherlands shipping companies consider that this situation hampers the efficient development of maritime relations. They urgently request that this situation be modified in such a way so as to allow greater freedom in the choice amongst available agents in the various ports.

I would greatly appreciate if you could exercise your good offices to ensure that this request is favourably considered by the Indonesian Authorities entrusted with the implementation of the pertinent regulations.

Van Oorschot

Mr. Ismael M. Thajeb

Chairman of the Indonesian Delegation

II b

Dear Dr. van Oorschot,

The Hague, June 17, 1968

I have the honour to acknowledge the receipt of your today's letter, reading as follows:

[See letter I b]

I have the honour to confirm that I will exercise my good offices to ensure that your request will be favourably considered by the Indonesian Authorities entrusted with the implementation of the pertinent regulations.

Yours sincerely,

Ismael M. Thajeb

Dr. W. P. H. van Oorschot Chairman of the Netherlands Delegation

No. 11386