

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF NORWAY AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA ON THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Kingdom of Norway and the Government of the Republic of Indonesia, each hereinafter referred to as a "Contracting Party",

Bearing in mind the agreement between the Contracting Parties concerning the encouragement and the reciprocal protection of investments which was signed at Jakarta on 24 November, 1969,

Desiring to develop the economic cooperation between the two States,

Preoccupied with encouraging and creating favourable conditions for investments by investors of one Contracting Party in the territory of the other contracting party on the basis of equality and mutual benefit,

Conscious that the mutual promotion and protection of investments, according to the present agreement will stimulate initiatives in this field,

Have agreed as follows:

Article I. Definitions

For the purpose of the present agreement:

1. The term "investment" shall mean any kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party, in conformity with its laws and regulations and including in particular. Though not exclusively:

(i) Movable and immovable property and any other property rights such as mortgages, liens, pledges and similar rights;

(ii) Shares, stocks, debentures or any other forms of participation in companies;

(iii) Claims to money which has been used to create an economic value or claims to any performance under contract having an economic value;

(iv) Industrial and intellectual property rights, such as technology, know-how, patents, industrial designs, trade-marks and goodwill;

(v) Business concessions conferred by law or under contract including concessions to search for, cultivate, extract and exploit natural resources.

2. The term "returns" shall mean the lawful amounts yielded by an investment such as profit, interest, royalties, fees, dividends and other lawful income derived from investments.

3. The term "investor" shall mean any national or company of a Contracting Party who effected or is effecting investment in the territory of the other Contracting Party.

"company" shall mean, with regard to each Contracting Party, any corporation, company, firm and enterprise incorporated or constituted under the law in force in the territory of that Contracting Party.

"national" shall mean, with regard to each Contracting party, any natural person having the nationality of that Contracting Party in accordance with its laws.

4. The term "territory" shall mean:

In respect of the Kingdom of Norway:

The territory of the Kingdom of Norway including the territorial sea, as well as the continental shelf over which the Kingdom of Norway exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas.

In respect of the Republic of Indonesia:

The territory of the Republic of Indonesia as defined in its laws and the adjacent areas over which the Republic of Indonesia has sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea 1982.

Article II. Applicability of the Present Agreement

This agreement shall apply to investments by investors of the Kingdom of Norway in the territory of the Republic of Indonesia which have been previously granted admission in accordance with the Law no. 1 of 1967 on foreign capital investment and any law amending or replacing it, and to investments by investors of the Republic of Indonesia in the territory of the Kingdom of Norway made after 1 January 1980 in accordance with the laws and regulations of the Kingdom of Norway.

Article III. Promotion and Protection of Investments

Each Contracting Party shall promote and encourage in its territory investments of investors of the other Contracting Party and accept such investments in accordance with its laws and regulations and accord them equitable and reasonable treatment and protection.

Article IV. Most Favoured Nation Treatment

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party, as well as the returns there from, shall be accorded treatment no less favourable than that accorded to investments made by investors of any third State.

2. The treatment granted under this Article shall not apply to any advantage accorded to investors of a third State by the other Contracting Party based on any existing or future customs or economic union or similar international agreement, or free trade agreement to which either of the Contracting Parties is or becomes a party. Neither shall such treatment relate to any advantage which either Contracting Party accords to investors of a third State by virtue of a double taxation agreement or other agreements regarding matters of taxation or any domestic legislation relating to taxation.

Article V. Compensation for Losses

Investors of one Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war, revolution, other armed conflict, State of national emergency or other similar events shall be accorded treatment no less favourable than that accorded to investors of any third State as regards restitution, indemnification, compensation or other settlement. Such payments shall be freely transferable.

Article VI. Expropriation and Compensation

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party cannot be expropriated, nationalized or subjected to other measures having a similar effect, all such measures hereinafter referred to as "expropriation", except when the following conditions are fulfilled:

(i) The expropriation shall be done for public interest and under domestic legal procedures;

(ii) It shall not be discriminatory;

(iii) It shall be done only against compensation.

2. Such compensation shall amount to the market value of the investment immediately before the date of expropriation and shall be paid without delay. The compensation shall include interest, computed from the first day following the date of expropriation until the date of payment. At the commercial rate of interest for the corresponding period of time. The payment of such compensation shall be effectively realizable and freely transferable.

Article VII. Transfers

1. Each Contracting Party guarantees, subject to and to the extent permitted by its laws and regulations, to the investors of the other Contracting Party. In respect of their investments, without delay the transfer of: (i) Returns, royalties and other income resulting from investments;

(ii) The invested capital or the proceeds of the total or partial liquidation or alienation of an investment;

(iii) Funds in repayment of borrowings in connection with an investment and interest due;

(iv) The earnings of employees who work within the framework of an investment.

2. Transfer of currency pursuant to the present agreement shall be made without delay in the convertible currency in which the investment has been made or in any other convertible currency if so agreed by the investor, at the official rate of exchange in force at the date of transfer.

Article VIII. Subrogation

In case one Contracting Party or any of its designated agencies has granted any guarantee against non-commercial risks in respect of an investment by its investor in the territory of the other Contracting Party and has made payment to such investor under that guarantee, the other Contracting Party shall recognize the transfer of the rights of such investor to the former Contracting Party or any of its designated agencies. The subrogation of the latter shall not exceed the original rights of such investor. As regards the transfer of payments to be made to the other Contracting Party by virtue of such subrogation, the provisions of Article V, VI and VII shall apply respectively.

Article IX. Disputes between a Contracting Party and an Investor

1. Any dispute arising between a Contracting Party and an investor of the other Contracting Party, shall be settled as amicably as possible.

2. In the event that such a dispute can not be settled amicably within six months from the date of a written notification, the investor in question may submit the dispute, at his discretion, for settlement to:

a) The Contracting Party's court, at all instances, having territorial jurisdiction;

b) The "International Centre for the Settlement of Investment Disputes", for the application of the arbitration procedures provided by the Washington Convention of 18 March 1966 on the "Settlement of Investment Disputes between States and Nationals of other States".

3. While arbitration or judicial proceeding instituted for the settlement of such a dispute are in progress, both Contracting Parties shall refrain from any intervention.

Article X. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this agreement should, as far as possible, be settled through negotiations between the Contracting Parties.

2. If a dispute between the Contracting Parties can not thus be settled within six months after the beginning of 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. These 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 the necessary appointments. If the president is a national of either Contracting Party or is 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 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 shall be invited to make the necessary appointments.

5. The arbitral tribunal determines its own procedure. The tribunal reaches its decision on the basis of the provisions of the present agreement and of the general principles and rules of international law. The arbitral tribunal reaches its decision by a majority vote. Such decision shall be final and binding on both Contracting Parties.

6. 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 parties, and this award shall be binding on both parties.

Article XI. Consultations

The representatives of the Contracting Parties shall, whenever needed hold meetings in order to review the implementation of the present agreement. These meetings shall be held on the proposal of one Contracting Party, at a place and at a time agreed upon through diplomatic channels.

Article XII. Application of other Provisions

Should national legislation of the Contracting Parties or present or future international agreement applicable between the Kingdom of Norway and the Republic of Indonesia contain general or specific regulations entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for in the present agreement, such regulation shall to the extent that it is more favourable prevail over the present agreement.

Article XIII. Entry Into Force

The Contracting Parties shall notify each other of the completion of the procedures required by its law for bringing the present agreement into force. The present agreement shall enter into force thirty days after the date of the receipt of the second notification.

Article XIV. Duration and Termination

The present agreement shall remain in force for a period of ten years. It may be terminated upon written notice by each Contracting Party. In such case it shall terminate upon the expiration of six months from the date of the written notice. It shall be extended tacitly for further periods of ten years, except in the case of denunciation in writing by one of the Contracting Parties at least six months before the expiry of each period of validity. With respect to investments made prior to the receipt of the notification of termination, the provisions of article i to xii shall remain in force for a further period of ten years from the date of the receipt of the notification.

Article XV. Other Arrangements

Upon entry into force of this agreement, the agreement between the Contracting Parties concerning the encouragement and the reciprocal protection of investments which was signed at Jakarta on 24 November 1969 shall be terminated and replaced by this agreement.

In witness whereof the undersigned, duly authorized thereto by their respective governments, have signed the present agreement.

Done at Jakarta on Tuesday 26 November 1991

In duplicate in the Norwegian, Indonesian and English languages, all texts being equally authentic.

In case of divergencies of interpretation the English text shall prevail.

For the Government of the Kingdom of Norway

For the Government of the Republic of Indonesia