

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA ON PROMOTION AND PROTECTION OF INVESTMENT

The Government of the Kingdom of the Netherlands

And

The Government of the Republic of Indonesia

(hereinafter referred to as 'Contracting Parties');

Bearing in mind the friendly and cooperative relations existing between the two countries and their peoples;

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

Recognizing that the Agreement on the promotion and protection of such investments will be conducive to the stimulation of investment activities in both countries;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1) The term 'investments' shall mean every kind of asset invested by nationals 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 as well as rights such as mortgages, privileges, and guarantees and any other rights in rem in respect of every kind of asset;

(b) Rights derived from shares, bonds or any other form of interest in companies or joint-ventures of the other Contracting Party;

(c) Claims to money or to any performance having a financial value;

(d) Rights in the field of intellectual property, technical processes, goodwill and know how;

(e) Business concessions and other rights conferred by law or under contract including concessions to natural resources such as concessions to prospect, explore, extract and win natural resources.

2) The term 'nationals' shall comprise with regard to either Contracting Party: i. Natural persons having the nationality of that Contracting Party;

ii. Legal persons constituted under the law of that Contracting Party.

3) The term 'without delay' shall be deemed to be fulfilled if a transfer is made within such period as is normally required by international financial custom.

4) 'Territory' shall mean: (a) In respect of the Kingdom of the Netherlands:

The territory of the Kingdom of the Netherlands including the maritime areas adjacent to the coast of the Kingdom of the Netherlands, to the extent to which sovereign rights or jurisdiction in those areas are exercised by the Kingdom of the Netherlands according to international law;

(b) In respect of the Republic of Indonesia:

The territory of the Republic of Indonesia as defined in its laws and in accordance with international law 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:

Article 2. Promotion and Protection of Investment

Either Contracting Party shall, within the framework of its laws and regulations, maintain and promote favourable conditions for nationals of the other Contracting Party to invest in its territory inter alia through protection in its territory of investments of nationals of the other Contracting Party and shall, within that framework, admit such investments.

Article 3. Treatment and Most Favoured Nation Provisions

1) Each Contracting Party shall ensure fair and equitable treatment of the investments of nationals 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 nationals. Each Contracting Party shall accord to such investments adequate physical security and protection.

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 nationals of any third State.

3) If a Contracting Party has accorded special advantages to nationals of any third State by virtue of agreements establishing customs unions, economic unions, monetary unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to nationals of the other Contracting Party.

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

Article 4. Taxation

With respect to taxes, fees, and charges connected therewith and to fiscal deductions and exemptions, each Contracting Party shall accord to nationals of the other Contracting Party who are engaged in any economic activity in its territory, treatment not less favourable than that accorded to its own nationals or to those of any third State that are in the same circumstances, whichever is more favourable to the nationals concerned. For this purpose, however, there shall not be taken into account any special fiscal advantages accorded by that Party:

(a) Under an agreement for the avoidance of double taxation; or

(b) By virtue of its participation in a customs union, economic union or similar institution; or

(c) On the basis of reciprocity with a third State.

Article 5. Expropriation

Nationals of either Contracting Party shall not be deprived, directly or indirectly, of their investments, nor shall their investments be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation in the territory of the other Contracting Party except by measures taken for a public purpose related to the internal needs of the expropriating Contracting Party, which shall be taken under due process of law and shall not be discriminatory or contrary to any undertaking which the Contracting Party which takes such measures may have given. The measures shall be taken against full, prompt and effective compensation. Such compensation shall amount to the market value of the investment expropriated prior to the moment when the decision to expropriate is announced or becomes known and shall include interest at a normal commercial rate until the date of payment. Such amount shall be calculated according to internationally acknowledged evaluation methods. Compensation shall be made without delay, be effectively realizable and freely transferable in any freely convertible currency.

Article 6. Compensation for Losses

Nationals 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 restitutions, indemnification, compensation or other settlement, which shall not be less favourable than that which the latter Contracting Party accords to its own nationals or nationals of any third State, whichever is more favourable to the nationals concerned.

Article 7. Transfer

The Contracting Parties shall guarantee that payments relating to an investment may be transferred. The transfers shall be made in a freely convertible currency, without restriction or delay. Such transfers include in particular though not exclusively:

- (a) Profits, interest, dividends and other current income;
- (b) Funds necessary i. For the acquisition of raw or auxiliary materials, semi-fabricated or finished products, or
ii. To replace capital assets in order to safeguard the continuity of an investment;
- (c) Additional funds necessary for the development of an investment;
- (d) Funds in repayment of loans;
- (e) Royalties or fees;
- (f) Earnings of natural persons;
- (g) The proceeds of sale or liquidation of the investment;
- (h) Compensation for losses;
- (i) Compensation for expropriation.

Article 8. Subrogation

If the investments of national of the one Contracting Party are insured against non-commercial risks under a system established by law, any subrogation of the insurer or reinsurer to the rights of the said national 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 national would have been entitled to exercise.

Article 9. Settlement of Disputes between Nationals and a Contracting Party

- 1) Any legal dispute between one Contracting Party and a national of the other Contracting Party concerning an investment of the latter in the territory of the former shall, if possible, be settled amicably.
- 2) If such a dispute cannot be settled according to the provisions of paragraph 1 above within period of three months from the date either party requested amicable settlement, the dispute shall, at the request of the national concerned, be submitted either to the judicial procedures provided by the Contracting Party concerned or to international arbitration or conciliation.
- 3) Submission of a dispute to domestic judicial procedures under paragraph 2 above shall not in any way affect the right of the national concerned to submit the dispute to international arbitration or conciliation
- 4) Each Contracting Party hereby consents to submit any legal dispute arising between that Contracting Party and a national of the other Contracting Party concerning an investment of that national in the territory of the former Contracting Party to the International Centre for Settlement of Investment Disputes for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March 1965.
- 5) A legal person which had the nationality of the Contracting Party, party to the dispute, on the date on which the parties consented to submit such dispute to conciliation or arbitration but which was controlled by nationals of the other Contracting Party shall, for the purpose of said Convention be treated as a national of the other Contracting Party.

Article 10. Settlement of Disputes between the Contracting Parties Concerning Interpretation and Application of the Agreement

1) Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement, which cannot be settled by means of diplomatic negotiations, shall, unless the Parties have otherwise agreed, be submitted, at the request of either Party, 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 as their chairman 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 latter Party may invite the President of the International Court of Justice to make the necessary appointment.

3) If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice, to make the necessary appointment.

4) If, in the cases provided for in the paragraphs 2 and 3 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 be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Party the most senior member of the Court available who is not a national of either Party shall be invited to make the necessary appointments.

5) The tribunal shall decide on the basis of respect for the law. Before the tribunal decides, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably. The foregoing provisions shall not prejudice settlement of the dispute *ex aequo et bono* if the Parties so agree.

6) Unless the Parties decide otherwise, the tribunal shall determine its own procedure. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties.

Article 11. Applicability of this Agreement

This Agreement shall, from its entry into force, apply to investments made after 10 January 1967 by nationals of the Kingdom of the Netherlands in the territory of the Republic of Indonesia and to investments by nationals of the Republic of Indonesia in the territory of the Kingdom of the Netherlands.

Article 12. Application of other Provisions

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 nationals 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 13. Consultation and Amendment

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

2) This Agreement may be amended at any time, if deemed necessary, by mutual consent.

Article 14. Territorial Application

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe, to the Netherlands Antilles and to Aruba, unless the notification provided for in Article 15, paragraph 1 provides otherwise.

Article 15. Entry Into Force, Duration and Termination

1) The present Agreement shall enter into force on the first day of the third month after the date of the latest notification by any Contracting Party of the accomplishment of the procedures constitutionally required in their respective countries. It shall remain in force for a period of ten years and shall continue to be 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 the present Agreement, the foregoing Articles shall

continue to be effective for a further period of fifteen years from the date of termination of the present Agreement.

3) Upon entry into force of this Agreement, chapter 2 and Article 25 of the Agreement on economic cooperation between the Government of the Republic of Indonesia and the Government of the Kingdom of the Netherlands, signed on 7 July 1968, shall be terminated and replaced by this Agreement. This Agreement will only terminate and replace the Agreement of 1968 in relations between the Republic of Indonesia and those parts of the Kingdom of the Netherlands to which the present Agreement applies in conformity with Article 14 of this Agreement.

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

DONE at (place), on (date) in duplicate, in the English language.

For the Republic of Indonesia

For the Kingdom of the Netherlands

Protocol to the Agreement between the Government of the Kingdom of the Netherlands and the Government of the Republic of Indonesia on Promotion and Protection of Investment.

On the signing of the Agreement between the Government of the Kingdom of the Netherlands and the Government of the Republic of Indonesia on promotion and protection of investment, the undersigned representatives have agreed on the following provisions, which constitute an integral part of the Agreement:

With reference to Article 3

1) The Government of the Republic of Indonesia, while recognizing the principle of national treatment of investments made by nationals of the Kingdom of the Netherlands, reserves its right to maintain limited exceptions to national treatment of such investments in view of the fact that there are separate laws governing investments in Indonesia, i.e.: 1. Law No. 1 of 1967 concerning Foreign Investment.

2. Law No. 6 of 1968 concerning Domestic Investment.

Notwithstanding the above statement, the Government of the Republic of Indonesia shall endeavour to the best of its ability to assure national treatment of investments of nationals of the Netherlands. In no case shall treatment of such investments be less favourable than law no. 1 of 1967, as amended in 1970, permits.

When, pursuant to present or subsequent legislation, the Indonesian Government, extends additional advantages to Indonesian nationals, the Indonesian Government shall, in order to ensure fair and equitable treatment, grant identical or compensating facilities to Netherlands nationals 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.

With reference to Article VII

Contracting Parties may maintain laws and regulations requiring reports of currency transfer, which do not restrict or delay the payments guaranteed under this Article.

DONE at [place], on [date], in duplicate, in the English language.

For the Republic of Indonesia:

For the Kingdom of the Netherlands