

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND THE GOVERNMENT OF THE REPUBLIC OF INDIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Indonesia and the Government of the Republic of India (hereinafter referred to as "Contracting Parties");

Desiring to create conditions favourable for fostering greater investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising that the encouragement and mutual protection of such investment will be conducive to the stimulation of individual business initiative and will increase prosperity in both Contracting Parties;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. "investment" means every kind of asset established or acquired, including changes in the form of such investment, in accordance with the national laws and regulations of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:

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

(ii) Shares in and stock and debentures of a company and any other similar forms of participation in a company;

(iii) Rights to money or to any performance under contract having a financial value;

(iv) Intellectual property rights, goodwill, technical processes and know-how in accordance with the relevant laws of the respective Contracting Party;

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

2. "investor" means any national or company of a Contracting Party;

(a) "national" means:

(i) In respect of the Republic of Indonesia:

Natural person having the nationality of Indonesia in accordance with its laws;

(ii) In respect of the Republic of India:

Persons deriving their status as Indian nationals from the law in force in India.

(b) "company" means:

(i) In respect of the Republic of Indonesia:

Legal person constituted or incorporated in accordance with its laws and regulations;

(ii) In respect of the Republic of India:

Corporations, firms and associations incorporated or constituted or established under the law in force in any part of India.

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

4. "territory" shall mean:

(a) In respect of the Republic of Indonesia:

The territory of the Republic of Indonesia as defined in its laws.

(b) In respect of the Republic of India:

The territory of the Republic of India including its territorial waters and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of India has sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws in force, the 1982 United Nations Convention on the Law of the Sea and International Law.

Article 2. Scope of the Agreement

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, accepted as such in accordance with its laws and regulations in force concerning foreign investments, whether made before or after the coming into force of this Agreement.

Article 3. Promotion and Protection of Investment

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to invest in its territory, and admit such investments in accordance with its laws and regulations.

2. Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party.

Article 4. Treatment of Investments

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party, shall receive treatment which is fair and equitable and not less favourable than that accorded to investments made by investors of any third State.

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

(a) Any existing or future customs union or free trade area or a common market or a monetary union or similar international agreement or other forms of regional cooperation to which either of the Contracting Party is or may become a party; or the adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or

(b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

3. Each Contracting Party shall, subject to its laws and regulations, accord to investment of investors of the other Contracting Party treatment no less favourable than that which is accorded to investments of its investors.

Article 5. Expropriation

1. Investments of investors of either 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 a public purpose in accordance with law on a nondiscriminatory basis and against fair and equitable compensation. Such compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at prevailing rate as agreed upon by both parties until the date of payment, shall be made without unreasonable delay, be effectively realizable and be freely transferable.

2. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to review, by a

judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.

3. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to ensure fair and equitable compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

Article 6. 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, a state of national emergency or civil disturbances 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. Resulting payments shall be freely transferable.

Article 7. Repatriation of Investment and Returns

1. Each Contracting Party shall permit all funds of an investor of the other Contracting Party related to the investment in its territory to be freely transferred, without unreasonable delay and on a non-discriminatory basis. Such funds may include:

- (a) Capital and additional capital amounts used to maintain and increase investments;
- (b) Returns including dividends and interest in proportion to their share-holding;
- (c) Repayment of any loan, including interest thereon, relating to the investment;
- (d) Payments of royalties and services fees relating to the investment;
- (e) Proceeds from sales of their shares;
- (f) Proceeds received by investors in case of sale or partial sale or liquidation;
- (g) The earnings of nationals of one Contracting Party who work in connection with investment in the territory of the other Contracting Party;

2. Nothing in paragraph (1) of this Article shall affect the transfer of any compensation under Article 6 of this Agreement.

3. Unless otherwise agreed to between the Parties, currency transfer under paragraph 1 of this Article shall be permitted in any convertible currency. Such transfer shall be made at the prevailing market rate of exchange on the date of transfer.

Article 8. Subrogation

Where one Contracting Party or its designated agency has guaranteed any indemnity against non-commercial risks in respect of an investment by any of its investors in the territory of the other Contracting Party and has made payment to such investors in respect of their claims under this Agreement, the other Contracting Party agrees that the first Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and assert the claims of those investors. The subrogation rights or claims shall not exceed the original rights or claims of such investors.

Article 9. 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, be settled amicably through consultations and negotiations.

2. If such a dispute cannot be settled within a period of six months from the date of written notification of the dispute, the dispute shall, at the option of the investor concerned, be submitted either to the competent judicial, arbitral or administrative bodies of the Contracting Party which has admitted the investment for settlement in accordance with its laws and the provisions of this Agreement, or to international arbitration or conciliation. The option so exercised under this paragraph shall be final.

3. In case the dispute is submitted to arbitration or conciliation, the investor shall be entitled to refer the dispute to:

(a) The International Centre for the Settlement of Investment Disputes (ICSID) 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, in case both Contracting Parties have become the parties to the Convention; or

(b) An ad hoc arbitral tribunal in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), 1976, subject to the following modification:

(i) The appointing authority under Article 7 of the Rules shall be the Secretary General of the Permanent Court of Arbitration at the Hague. The third arbitrator shall not be a national of either Contracting Party.

(ii) The parties shall appoint their respective arbitrators within two months.

(iii) The arbitral award shall be made in accordance with the provisions of this Agreement.

(iv) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.

(v) The arbitral award shall be final and binding on both the parties.

Article 10. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled amicably through negotiation.

2. If a dispute between the Contracting Parties cannot thus be settled within six months from the time the dispute arose, 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 two 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 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 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 11. Entry and Sojourn of Personnel

A Contracting Party shall, subject to its laws and regulations relating to the entry and sojourn of non-citizens, permit natural persons of the other Contracting Party and personnel employed by companies of the other Contracting Party to enter and remain in its territory for the purpose of engaging in activities connected with investments.

Article 12. Applicable Laws

1. Except as otherwise provided in this Agreement, all investments shall be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

2. Notwithstanding paragraph 1 of this Article nothing in this Agreement precludes the host Contracting Party from taking action for the protection of its essential security interests or in circumstances of extreme emergency in accordance with its laws normally and reasonably applied on a nondiscriminatory basis.

Article 13. Application of other Rules

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 rules, 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 rules shall to the extent that they are more favourable prevail over the present Agreement.

Article 14. Consultation and Amendment

1. Either Contracting Party may request for consultations on matters relating to this Agreement.
2. This Agreement may be amended by mutual consent of both Contracting Parties at any time after its entry into force. Any alteration or modification of this Agreement shall be done without prejudice to the rights and obligations arising from this Agreement prior to the date of such alteration or modification until such rights and obligations are fully implemented.

Article 15. Entry Into Force, Duration and Termination

1. The present Agreement shall enter into force thirty (30) days after the later date on which the Governments of the Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled. The later date shall refer to the date on which the last notification letter is sent.
2. This Agreement shall remain in force for a Period of ten years and thereafter it shall be deemed to have been automatically extended unless either Contracting Party gives to the other Contracting Party a written notice of its intention to terminate the Agreement. The Agreement shall stand terminated one year from the date on receipt of such written notice.
3. Notwithstanding termination of this Agreement pursuant to paragraph (1) of this Article, the Agreement shall continue to be effective for a further period of fifteen years from the date of its termination in respect of investments made or acquired before the date of termination of this Agreement.

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

Done at Montego Bay on this the 8th day of February 1999 in two originals each in Indonesian, Hindi and English languages, all texts being equally authentic. In case of any divergence, the English text shall prevail.

For the Government of the Republic of Indonesia

For the Government of the Republic of India