

# **AGREEMENT BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF INDONESIA CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Federal Republic of Germany and the Republic of Indonesia

(hereinafter referred to as "Contracting Parties")

Bearing in mind the friendly and co-operative relations existing between the two countries and their peoples,

Desiring to intensify economic co-operation between both Contracting Parties,

Intending to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the encouragement and contractual protection of such investments are apt to stimulate private business initiative and to increase the prosperity of both nations,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement

(1) The term "investments" shall mean every kind of asset, according to the laws and regulations of the Contracting Parties, in particular:

(a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges;

(b) Shares of companies and other kinds of interest in companies;

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

(d) Intellectual property rights, including but not limited to copyrights and related rights, trademarks, geographical indications, industrial designs, patents, layout design (topographies) of integrated circuits, protection of undisclosed information, know-how and good will;

(e) Business concessions under public law, including concessions to search for, extract and exploit natural resources;

Any alteration of the form in which assets are invested shall not affect their classification as investment, provided that such alteration is not contrary to the laws and regulations of the Contracting Party, in the territory of which the investment has been made;

(2) The term "returns" shall mean the amounts yielded by an investment for a definite period, such as profit, dividends, interest, royalties or fees;

(3) The term "investors" shall mean:

(a) In respect of the Republic of Indonesia:

(i) Natural persons having the nationality of the Republic of Indonesia,

(ii) Legal persons constituted under the law of the Republic of Indonesia;

(b) In respect of the Federal Republic of Germany:

(i) Germans within the meaning of the Basic Law of the Federal Republic of Germany,

(ii) Any juridical person as well as any commercial or other company or association with or without legal personality having its seat in the territory of the Federal Republic of Germany, irrespective of whether or not its activities are directed at profit;

(4) 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, the exclusive economic zone 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 Federal Republic of Germany:

The territory of application of the law of the Federal Republic of Germany and the territory where international law permits the exercise of sovereign rights or jurisdiction.

## **Article 2. Promotion and Protection of Investments**

(1) Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.

(2) Each Contracting Party shall in its territory in any case accord investments by investors of the other Contracting Party fair and equitable treatment as well as full protection under the provisions of this Agreement.

(3) Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

## **Article 3. Treatment of Investments**

(1) Neither Contracting Party shall subject investments in its territory owned by investors of the other Contracting Party to treatment less favourable than it accords to investments of its own investors or to investments of investors of any third State.

(2) Neither Contracting Party shall subject investors of the other Contracting Party, as regards their activity in connection with investments in its territory, to treatment less favourable than it accords to its own investors or to investors of any third State.

(3) Such treatment shall not relate to privileges which either Contracting Party accords to investors of third States on account of its membership of, or association with, a customs or economic union, a common market or a free trade area.

(4) The treatment granted under this Article shall not relate to advantages which either Contracting Party accords to investors of third States by virtue of a double taxation agreement or other agreements regarding matters of taxation.

## **Article 4. Expropriation and Compensation**

(1) Investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party under the provisions of this Agreement.

(2) Investments by investors of either Contracting Party shall not directly or indirectly be expropriated, nationalized or subjected to any other measure the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party except for the public benefit and against compensation. Such compensation shall be equivalent to the value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure has become publicly known. The compensation shall be paid without delay and shall carry interest at the average prevailing local short term inter-bank market lending rate until the time of payment. Such amount shall be calculated according to internationally accepted evaluation methods. It shall be effectively realizable, freely transferable and in convertible currency. Provision shall have been made in an appropriate manner at or prior to the time of expropriation, nationalization or comparable measure for the determination and payment of such compensation. The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review by due process of law.

(3) Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing

to war or other armed conflict, revolution, a state of national emergency, or revolt, shall be accorded treatment no less favourable by such other Contracting Party than that which the latter Contracting Party accords to its own investors as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable and in convertible currencies.

(4) Investors of either Contracting Party shall enjoy most-favoured-nation treatment in the territory of the other Contracting Party in respect of the matters provided for in this Article.

## **Article 5. Transfer**

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments in connection with an investment, in particular

(a) The principal and additional amounts to maintain or increase the investment;

(b) The returns;

(c) The repayment of loans;

(d) The proceeds from the liquidation or the sale of the whole or any part of the investment;

(e) The compensation provided for in Article 4 of this Agreement;

(f) 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;

(g) Earnings of natural persons.

(2) Transfers under Article 4 (2) or (3), under this Article or Article 6 shall be made without delay at the market rate of exchange applicable on the day of transfer.

(3) Should there be no foreign exchange market the cross rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment for conversions of the currencies concerned into Special Drawing Rights shall apply.

## **Article 6. Subrogation**

If either Contracting Party makes a payment to any of its investors under a guarantee it has assumed in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 9, recognize the assignment, whether under a law or pursuant to a legal transaction, of any right or claim of such investor to the former Contracting Party. The latter Contracting Party shall also recognize the subrogation of the former Contracting Party to any such right or claim (assigned claims) which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments made by virtue of such assigned claims, Article 4 (2) and (3) as well as Article 5 shall apply *mutatis mutandis*.

## **Article 7. Applicability of the Agreement**

This Agreement shall equally apply to investments made prior to and after its entry into force by investors of either Contracting Party in the territory of the other Contracting Party consistent with the latter's legislation at the time the investment was made.

## **Article 8. Application of other Provisions**

(1) If the laws and regulations of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this 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 this Agreement, such regulation shall to the extent that it is more favourable prevail over this Agreement.

(2) Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

## **Article 9. Settlement of 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 amicably by the governments of the two Contracting Parties.

(2) If a dispute cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitration tribunal.

(3) Such arbitration tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third Party as their chairman to be appointed by the governments of the two Contracting Parties. Such members shall be appointed within two months, and such chairman within three months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.

(4) If the periods specified in paragraph 3 above have not been observed, either Contracting Party may, in the absence of any other arrangement, 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 if he is otherwise prevented from discharging the said function, the Vice-President should 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 Court next in seniority who is not a national of either Contracting Party should make the necessary appointments.

(5) The arbitration tribunal shall reach its decisions by a majority of votes. Such decisions shall be final and binding. Each Contracting Party shall bear the cost of its own member and of its representatives in the arbitration proceedings; the cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitration tribunal may make a different regulation concerning costs. In all other respects, the arbitration tribunal shall determine its own procedure.

## **Article 10. Settlement of Disputes between an Investor and a Contracting Party**

(1) Disputes concerning investments between a Contracting Party and an investor of the other Contracting Party should as far as possible be settled amicably between the parties in dispute.

(2) If the dispute cannot be settled within six months of the date when it has been raised by one of the parties in dispute, it shall, at the request of the investor of the other Contracting Party, be submitted to the competent court of the Contracting Party in whose territory the investment is made, or to arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington D.C. on 18 March 1965.

(3) The award shall be binding and shall not be subject to any appeal or remedy other than those provided for in the said Convention. The award shall be enforced in accordance with domestic law.

(4) During arbitration proceedings or the enforcement of an award, the Contracting Party involved in dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage.

(5) The provisions of this Article shall not apply to any dispute which arose before the entry into force of this Agreement.

## **Article 11. Consultations**

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

## **Article 12. Relations between the Contracting Parties**

This Agreement shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

## Article 13. Protocol

The attached Protocol shall form an integral part of this Agreement.

## Article 14. Entry Into Force, Duration and Termination

(1) This Agreement shall be subject to ratification. It shall enter into force on the thirtieth day after the date of exchange of the instruments of ratification. This Agreement shall remain in force for a period of ten years and thereafter it shall remain in force unless denounced in writing through diplomatic channels by either Contracting Party twelve months in advance before its expiration.

(2) Upon entry into force of this Agreement the Agreement between the Federal Republic of Germany and the Republic of Indonesia concerning the Encouragement and Reciprocal Protection of Investments of 8 November 1968, the associated Protocol and the exchange of letters of the same date shall cease to be in force.

(3) In respect of investments made prior to the date of termination of this Agreement, the provisions of the preceding Articles shall continue to be effective for a further period of twenty years from the date of termination of this Agreement.

In witness whereof, the plenipotentiaries, being duly authorized thereto, have signed this Agreement.

Done at Jakarta on 14 May 2003 in duplicate in the German, Indonesian and English languages, all three texts being authentic. In case of divergent interpretations of the German and the Indonesian texts, the English text shall prevail.

For the Federal Republic of Germany

Gerhard Fulda

Wolfgang Clement

For the Republic of Indonesia

Wirajuda

### PROTOCOL

On signing the Agreement between the Federal Republic of Germany and the Republic of Indonesia concerning the Promotion and Reciprocal Protection of Investments, it was agreed, in addition, that the following provisions shall be regarded as an integral part of the said Agreement:

(1)

(a) Returns from the investment and, in the event of their re-investment, the returns therefrom shall enjoy the same protection as the investment.

(b) Without prejudice to any other method of determining nationality, in particular any person in possession of a national passport issued by the competent authorities of the Contracting Party concerned shall be deemed to be a national of that Contracting Party.

(2) Whenever goods or persons connected with an investment are to be transported, each Contracting Party shall neither exclude nor hinder transport enterprises of the other Contracting Party and shall issue permits as required to carry out such transport in accordance with its laws and regulations.

(3)

(a) The following shall more particularly, though not exclusively, be deemed "activity" within the meaning of Article 3 (2): the management, maintenance, use, enjoyment and disposal of an investment. The following shall, in particular, be deemed "treatment less favourable" within the meaning of Article 3: unequal treatment in the case of restrictions on the purchase of raw or auxiliary materials, of energy or fuel or of means of production or operation of any kind, unequal treatment in the case of impeding the marketing of products inside or outside the country, as well as any other measures having similar

effects. Measures that have to be taken for reasons of public security and order, public health or morality shall not be deemed "treatment less favourable" within the meaning of Article 3.

(b) The provisions of Article 3 do not oblige a Contracting Party to extend to investors resident in the territory of the other Contracting Party tax privileges, tax exemptions and tax reductions which according to its tax laws are granted only to investors resident in its territory.

(c) The Contracting Parties shall within the framework of their national laws and regulations give prompt consideration to applications for the entry and sojourn of persons of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment; the same shall apply to employed persons of either Contracting Party who in connection with an investment wish to enter the territory of the other Contracting Party and sojourn there to take up employment. Applications for work permits shall also be given prompt consideration in conformity with its laws and regulations.

(4) A transfer shall be deemed to have been made "without delay" within the meaning of Article 5 (2) if effected within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the relevant request has been submitted and may on no account exceed two months.

(5) An investor from the Republic of Indonesia who has made an investment in the Federal Republic of Germany can appeal to an international arbitration tribunal in the same dispute after a German national court has rendered a decision in substance. An investor from the Federal Republic of Germany who has made an investment in the Republic of Indonesia can appeal to an international arbitration tribunal or to a local court. In case the dispute has been brought to an Indonesian court, the dispute can only be submitted for arbitration if it can be withdrawn by the investor according to Indonesian laws and regulations.

(6) Consultations can include, if deemed necessary, the question of an amendment of this Agreement by mutual consent of the Contracting Parties.