

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Singapore and the Government of the Republic of Indonesia (each hereinafter referred to as a "Contracting Party");

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

INTENDING to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party on the basis of sovereign equality and mutual benefit;

RECOGNIZING that the Agreement on the Promotion and Protection of Investments (hereinafter referred to as "the Agreement") will be conducive to the stimulation of investment activities in both countries pursuant to prevailing laws and regulations of the respective countries;

HAVE AGREED AS FOLLOWS:

Article I. Definition

For the purpose of this Agreement:

1. The term "investments" shall mean any kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party, in conformity with the laws and regulations of the latter, including, though not exclusively: a. Movable and immovable property as well as other property rights such as mortgages, liens or pledges;
b. Shares, stocks, debentures and similar interests in companies;
c. Claims to money or to any performance under contract having an economic value;
d. Intellectual property rights (including, but not limited to, copyrights and neighboring rights, trademarks, patents, industrial design, layout design of integrated circuit and right in plants varieties) know how, trade secrets, trade names and goodwill;
e. Business concessions conferred by law or under contract including concessions to search for or exploit natural resources.
Any change of the form in which an asset is invested and reinvested shall not affect its character as an investment provided that the change has been made in accordance with Article X of this Agreement.
2. The term "investors" shall comprise with regard to either Contracting Party: a. Natural persons having the nationality of that Contracting Party;
b. Any company, firm, association or body, with or without legal personality, incorporated, established or registered 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 practices.
4. The term "returns" means monetary amounts yielded by an investment including any profits, interests, capital gains, dividends, royalties, or fees.
5. The term "freely convertible currency" means any currency that is widely used to make payments for international transaction and widely traded in the principal international exchange market.
6. The term "territory" means: a. With respect to the Republic of Singapore:

Its territory as defined in its laws and adjacent seas over which the Republic of Singapore has sovereignty, sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea 1982.

b. With respect to the Republic of Indonesia:

Its territory as defined in its laws including part of the continental shelf and adjacent seas over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea 1982.

Article II. Promotion and Protection of Investments

Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to invest in its territory.

2. Investments admitted or approved under Article X of this Agreement shall at all times be accorded fair and equitable treatment and shall enjoy protection and security in the territory of the other Contracting Party in accordance with the terms of this Agreement. Each Contracting Party shall accord to such investment adequate physical security and protection.

Article III. Most-favoured-nation and National Treatment

1. Each Contracting Party shall in its territory subject investments admitted or approved under Article X or returns from such investments of investors of the other Contracting Party to treatment: a. Which it accords to investments or returns from investments of investors of any other State; or

b. Subject to its laws and regulations, that which it accords to investments or returns from investments of its own investors, Whichever is more favourable.

2. If a Contracting Party has accorded special advantages to investors of any third state by virtue of agreements establishing customs unions, free trade area or arrangement, common market, monetary unions or similar institutions, or other forms of economic integration to which either of the Contracting Parties is or may become a party; or the adoption of an agreement designed to lead to the formation or extension of such a union, area or arrangement, that Contracting Party shall not be obliged to accord such advantages to investors of the other Contracting Party.

Article IV. Expropriation

Each Contracting Party shall not take any measures of expropriation, nationalization or any other dispossession, having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") against the investments of an investor of the other Contracting Party except under the following conditions:

a. The measures are taken for a lawful purpose or public purpose and under due process of law;

b. The measures are non discriminatory; and

c. The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the fair market value before the measure of dispossession became public knowledge. Such market value shall be determined in accordance with internationally acknowledged practices and methods, and it shall be freely transferable, without delay, in a freely convertible currency from the Contracting Party.

2. Any measures of expropriation or valuation may, at the request of investors be reviewed by a judicial or other independent authority of the Contracting Party taking the measures in the manner prescribed by its laws.

3. Notwithstanding paragraph (1), any measure of expropriation relating to land, which shall be as defined in its domestic legislation of each Contracting Party, shall be for a purpose and upon payment of compensation in accordance with the aforesaid legislation and any subsequent amendments thereto.

Article V. 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, 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 restitution, indemnification, compensation or other settlement, if any, not less favourable than that which the latter Contracting Party accords to

investors or investors of any other State.

Article VI. Transfer

Each Contracting Party shall ensure to investors of the other Contracting Party the free transfer, without delay, on a non discriminatory basis, the capital and the returns from any investments. Such transfers shall include, in particular, though not exclusively: a. Profits, interests, 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 having the nationality of the other Contracting Party who work in connection with an investment;

g. The proceeds of sale or liquidation of the investment;

h. Compensation for losses;

i. Compensation for expropriation;

j. Payments in respect of technical assistance, technical service and management fees, and payments in connection with contracting projects.

2. Such transfer shall be made at the prevailing market rate of exchange on the date of transfer in a freely convertible currency.

Article VII. Subrogation

1. If the investments of an investor of one Contracting Party are insured against non-commercial risks, any subrogation of the insurer or re-insurer to the rights of the said investor pursuant to the terms of such insurance shall be recognized by the other Contracting Party, provided, however, that the insurer or the re-insurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.

2. In the event of exercising subrogated rights or claims, the Contracting Party exercising such rights or claims shall disclose the coverage claims arrangement with its investors to other Contracting Party.

Article VIII. Settlement of Disputes between an Investor and a Contracting Party

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, shall be settled amicably through consultations and negotiations. The Party intending to resolve such disputes through negotiations shall give written notice to the other of its intention.

2. If the dispute cannot be settled within a period of six months from the date of the notice referred to in paragraph (1) then, unless the parties have otherwise agreed, it shall upon the written request of the investor concerned, be submitted either to:

a. The competent court of the Contracting Party concerned for a decision;

b. Any regional center for arbitration in ASEAN;

c. Conciliation or arbitration by the International Centre for Settlement of Investment Disputes (hereinafter referred to as "the Centre" in this Agreement) established by the Convention on the Settlement of Investment Disputes between the States and Nationals of Other States opened for signature at Washington on 18 March, 1965 (hereinafter referred to as "the Convention"). For this purpose, each Contracting Party hereby irrevocably consents in advance under Article 25 of the Convention to submit any dispute to the Centre; or

d. An ad hoc tribunal established under the arbitration rules of the United Nations Commission on International Trade Law

(UNCITRAL).

Article IX. Settlement of Disputes between the Contracting Parties

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

2. If a dispute according to paragraph (1) of this Article cannot be settled, it shall upon the request of either Contracting Party, be submitted to an arbitration tribunal (hereinafter referred to as "the tribunal").

3. The tribunal shall be constituted ad hoc as follows: Within two (2) months of the request for arbitration each Contracting Party shall appoint one arbitrator. The third arbitrator who shall be the chairman of the tribunal, shall be appointed by agreement of the Contracting Parties within two (2) further months.

4. If the periods specified in paragraph (3) of this Article are not observed, either Contracting Party may, in absence of any other relevant arrangement, invite the President of the International Court of Justice to appoint the arbitrator or arbitrators not yet appointed. If the President of the International Court of Justice is a national of either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-President or in case of his inability the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments and so on until one is qualified to make the appointments.

5. The tribunal shall reach its decision by a majority of votes. The decision shall be final and binding and the Contracting Parties shall abide by and comply with the terms of its award.

6. Each Contracting Party shall bear the costs of its own member of the tribunal and of its legal representation in the arbitration proceedings. The costs of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The tribunal may, however, in its award direct that a higher proportion of the costs shall be borne by one of the two Parties.

7. Apart from the above, the tribunal shall establish its own rules of procedure.

Article X. Applicability of this Agreement

This Agreement shall only apply:

a. In respect of investments in the territory of the Republic of Singapore, to all investments made by investors of the Republic of Indonesia, which are specifically approved in writing by the competent authority designated by the Government of the Republic of Singapore.

b. In respect of investments in the territory of the Republic of Indonesia, to all investments made by investors of the Republic of Singapore, which have been admitted in accordance with its laws and regulations concerning foreign investment and any laws and regulations amending or replacing it.

2. The provisions of paragraph (1) shall also apply to investments made by investors of either Contracting Party, in the territory of the other Contracting Party before the coming into force of this Agreement. For the avoidance of doubt, it is hereby agreed that no further approval or admittance shall be required for investments already approved or admitted under the Agreement between the Government of the Republic of Singapore and the Government of the Republic of Indonesia on the Promotion and Protection of Investments dated 28 August 1990.

3. This Article shall not apply to any dispute, claim or difference which arose before its entry into force.

Article XI. 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 terms, 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 terms shall to the extent that they are more favourable prevail over the present Agreement.

Article XII. Consultation and Amendment

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 of both Contracting Parties.

Article XIII. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force three (3) months after the date of the latest notification by which Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled.

2. This Agreement shall remain in force for a period of ten (10) years and shall continue in force thereafter for similar period unless either Contracting Party notifies the other Contracting Party in writing of its intention to terminate this Agreement one year before its expiration.

3. With respect to investments made prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a further period of ten (10) years from the date of termination.

4. With effect from the date of entry into force of this Agreement, the Agreement between the Government of the Republic of Indonesia and the Government of the Republic of Singapore on the Promotion and Protection of Investments dated 28th August 1990 shall cease to apply between Contracting Parties.

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

Done in duplicate at Singapore on 16 February 2005 in the Indonesian and English languages, both texts being equally authentic. If there is any divergence concerning interpretation, the English text shall prevail.

For the Government of the Republic of Singapore

LIM HNG KIANG

Minister for Trade and Industry

For the Government of the Republic of Indonesia

Dr. N. HASAN WIRAJUDA

Minister for Foreign Affairs