# AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND THE GOVERNMENT OF THE KINGDOM OF MOROCCO FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

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

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

Desiring to create favourable conditions for greater economic cooperation between the Contracting Parties and in particular through investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising the importance of the promotion and protection of investments and its contribution to stimulate inflows of capital and business initiative and to increase prosperity in both countries;

Have agreed as follows:

## Article I. Definitions

For the purposes 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, but not exclusively: a. Movable and immovable property and any other property rights such as mortgages, pledges and liens;

b. Shares, stocks or any other form of participation in companies;

c. Claims to money or to any performance under contract having a financial value;

d. Intellectual and industrial property rights, patents, industrial marks and designs, trademarks, goodwill, know-how and any other similar rights;

e. Business concessions conferred by law or under contract, including concessions to search for, extract or exploit natural resources.

Any change in the legal form in which assets are invested or reinvested does not affect their character as investments in the meaning of this Agreement.

2. The term "investors" means in respect of each Contracting Party: a. Any physical person having Moroccan or Indonesian nationality under the law in force in each of the Contracting Parties;

b. Any legal person or entity constituted under the law in force in each of the Contracting Parties and having effective economic activity in the territory of that Contracting Party.

3. "Returns" means the amounts after payment of tax yielded by such investments and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties or fees.

4. 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.

5. "Territory" means: 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 Kingdom of Morocco:

The territory of the Kingdom of Morocco, including any maritime area situated beyond the territorial waters of the Kingdom of Morocco and which has been or might in the future be designated by the laws of the Kingdom of Morocco in accordance with international law as an area within which the Kingdom of Morocco may exercise rights with regard to the sea-bed and subsoil and the natural resources.

## Article II. Promotion and Protection of Investments

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

2. Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and subject to the strictly necessary measures to maintain the public order shall enjoy adequate protection and security in the territory of the other Contracting Party.

3. (a) Extension, alteration or change of an investment made according to law and regulation in force in the reception country are considered as a new investment.

(b) Returns of investments, in case of their reinvestment in accordance with the law in force in each of the Contracting Parties, shall enjoy the same protection accorded to the initial investment.

## Article III. Treatment of Investments

1. Each Contracting Party shall in its territory accord to investments of investors of the other Contracting Party treatment no less favourable than that it accords to investments of investors of any third State, the most favourable treatment being retained.

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that it accords to investors of any third State, the most favourable treatment being retained.

3. The provisions in this Agreement relative to the grant of treatment not less favorable than that accorded to the investors of either Contracting Party or 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 economic or customs union or a fee trade area or a common market, or any similar international agreement or any form of regional economic organization to which either of the Contracting Parties is or may become a party;

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

## Article IV. Expropriation and Compensation

1. Measures of nationalisation, expropriation or any other measures having an equivalent effect, hereinafter referred to an expropriation, that might be taken by one of the Contracting Parties against the investments of investors of the other Contracting Party must be neither discriminatory nor taken other than for a public purpose.

2. The Contracting Party takes such a measure shall give a fair and equitable compensation. Such compensation shall amount to the market value of the investment expropriated on the date of expropriation or expropriation became public knowledge.

3. The amount of the said compensation shall be effectively realizable, and shall be paid without delay and at the latest within three months of the date of implementation of the said measure. In case of a late payment, an interest at a normal commercial rate as mutually agreed shall be calculated from the due date until the date of payment. Compensation shall be paid to investors in convertible currency and be freely transferable.

## Article V. Compensation for Losses

Investors of one of the Contracting Parties whose investments are affected by losses as a result of, war or armed conflict, revolution, a state of national emergency, revolt, insurrection or other similar events in the territory of the other Contracting Party, shall receive treatment no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State; whichever is the more favourable treatment being adopted as regards restitution, indemnification, compensation or other settlement in respect of the said losses.

## Article VI. Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer, after payment of tax, within the scope of its laws and regulations, of their assets invested, in particular though not exclusively, included: a. Capital invested and any additional amount used to maintenance or extension of the investment;

b. Profit, dividends, interests, royalties or other current revenue;

c. Amounts necessary to repay loans accorded in connection with investments;

d. Proceeds from sale or liquidation of all or any part of an investment;

e. Compensation payable pursuant to article 4 and 5;

f. Salaries, wages and other remunerations received by the nationals of one Party who have obtained in the territory of the other Party the corresponding work permits relative to an investment, pursuant to the exchange regulations in force in each Contracting Party.

2. Transfers mentioned in paragraph (1) shall be effected without delay in convertible currency at the rate of exchange applicable on the date of transfer.

## Article VII. Subrogation

1. If a payment under an indemnity has given to an investor of one of the Contracting Party under a legal insurance against non-commercial risks in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise to the insurer the subrogation to the investor in all the indemnified rights and claims.

2. In virtue of the insurance accorded to the concerned investment, the insurer is entitled to exercise all rights which the investor would have been entitled to exercise.

3. Dispute between one of the Contracting Parties and an insurer of an investment of the other Contracting Party shall be settled in accordance with the provisions of Article VIII of this Agreement.

## Article VIII. Settlement of Disputes between Investors and the Contracting Party

1. Disputes between one Contracting Party and an investor of the other Contracting Party, in connection with investment, shall be settled, as far as possible amicably, by consultations and negotiations between the parties in dispute.

2. If these disputes cannot be settled in this way within six months following the date of a written notification, the dispute can be submitted, as the investor may choose: a. Either to a competent court of the Contracting Party in whose territory the investment was made;

b. Or for arbitration to the International Center for Settlement of Investment Disputes (ICSID) set up by the (Convention on Settlement of Investment Disputes Between States and Nationals of other States), opened for signature at Washington on March 18th 1965.

Once the Party of dispute has submitted the dispute to a competent court of the Contracting Party in whose territory the investment was made or to international arbitration, that election shall be final.

3. Neither of the Contracting Party of dispute may raise as an objection at any stage of proceedings or enforcement of an arbitral award because of the investor which is the other party to the dispute has received, an indemnity covering wholly or partially his losses in pursuance to an insurance contract.

4. The arbitral tribunal shall base its decision on the national law of the Contracting Party involved in dispute in whose territory the investment was made, including the rules relative to conflicts of law, the provisions of this Agreement; the provisions of particular agreements relative to investment and provisions of international law.

5. The arbitration award shall be final and binding for all parties in dispute. Each Contracting Party commits itself to execute the award according to its national law.

## Article IX. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if

possible, be settled through diplomatic channels.

2. If a dispute between the Contracting Parties thus cannot be settled within 6 (six) months, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal as agreed upon by the Contracting Parties.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way: - Within 3 (three) 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 third State who on approval by the two Contracting Parties shall be appointed chairman of the tribunal.

- The Chairman shall be appointed within 2 (two) months from the date of the appointment the other two members.

4. If within the period specified in Paragraph 3 of this Article the necessary appointment has 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 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 appointment.

5. The tribunal shall reach its decisions by a majority of votes. Such decision shall be final and 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 costs of the chairman and the remaining cost shall be borne in equal parts by the Contracting Parties. The tribunal shall determine its own procedure.

## Article X. Applicability of this Agreement

1. This Agreement shall apply to investments by investors of the Republic of Indonesia in the territory of the Kingdom of Morocco which have been previously granted admission in accordance with the law concerning foreign investment and any law amending or replacing it, and to investments by investors of the Kingdom of Morocco in the territory of the Republic of Indonesia which have been granted admission in accordance with the Law concerning Foreign Investment and any law amending or replacing it.

2. This Agreement shall also covers, concerning its future application, investments made in convertible currencies before its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the law and regulation of this latter. But this Agreement shall not apply to disputes which would arise 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 a regulation, whether general or specific, entitling investments made by investors 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 XII. 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 XIII. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the thirtieth day after the date of receipt of later notification by which the 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 at

least six months before its expiration.

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

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

DONE at Jakarta on this 14 day of March 1997 in duplicate in Indonesian, Arabic and English languages, all texts being equally authentic. In case any divergence, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

FOR THE GOVERNMENT OF THE KINGDOM OF MOROCOO