

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

The Government of the Republic of Indonesia and the Government of the Socialist Republic of Vietnam hereinafter called "Contracting Parties",

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

Desiring to create favourable conditions for greater economic cooperation between them and, in particular, for the investment of capital by investors of one Contracting Party in the territory of the other Contracting Party on the basis of respect for the independence and sovereignty of each other, equally and mutual benefit,

Recognizing that the reciprocal encouragement and protection of such investment of capital and in the investment under international agreement will help increase prosperity in both countries;

Have agreed as follows:

Article I. Definitions

For the purpose of this Agreement:

1. The term "investment" shall mean any kind of asset invested by investors of one Contracting Party in the territory of the other, in conformity with the laws and regulations of the latter, including but not exclusively:

- a. Movable and immovable property and any other rights such as mortgages, liens or pledges;
- b. Shares, stocks and debentures of companies wherever incorporated or interests in the property of such companies;
- c. Claims to money or to any performance under contract having a financial value;
- d. Intellectual property rights including copyright commercial trade mark, patents, industrial designs, know-how, trade secrets, trade names and goodwill;
- e. Business concessions conferred by law or under contract including concessions to search for, cultivate, extract or exploit natural resources.

2. "Investors" means any company being a national of a Contracting Party who effected or is effecting investments in the territory of the other Contracting Party.

3. The term "company" shall mean, with regard to each Contracting Party, any juridical persons including corporation, company, firm and enterprise incorporated or constituted under the law in force in the territory of that Contracting Party.

4. The term "national" shall mean, with regard to each Contracting Party, any natural person having the nationality of that Contracting Party in accordance with its laws.

5. The term "Returns" or "incomes" shall mean the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties or fees.

6. "Territory" means:

- a. In respect of the Republic of Indonesia, The "territory" of the Republic of Indonesia as defined in its laws and adjacent areas, over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with international law;

b. In respect of the Socialist Republic of Vietnam, The "territory" and the adjacent waters over which the Socialist Republic of Vietnam has sovereignty or jurisdiction in accordance with international law.

Article II. 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 shall admit such capital in accordance with its laws and regulations.

2. Investments of investors of each Contracting Party shall at all time be accorded fair and equitable treatment and shall enjoy adequate protection and security in the territory of the other Contracting Party.

Article III. Scope of Agreement

1. The benefits of this Agreement shall apply only in cases where the investment of capital by the investors of one Contracting Party in the territory of the other Contracting Party has been specifically approved in writing by the competent authorities of the latter Contracting Party.

2. Investors of either Contracting Party shall apply for such approval in respect of any investment of capital whether made before or after the entry into force of this Agreement.

3. This agreement shall apply to investments by investors of the Socialist Republic of Vietnam in the territory of the Republic of Indonesia which have been previously granted admission in accordance with Law No.1 of 1967 on Foreign Capital Investment and any law amending or replacing it and to investments by investors of the Republic of Indonesia in the territory of the Socialist Republic of Vietnam which have been granted admission in accordance with Law of 1987 on Foreign Investment in Vietnam and any law amending or replacing it.

Article IV. Most-favoured-nation Provisions

1. Neither Contracting Party shall in its territory subject investments effected by, and income accruing to investors of the other Contracting Party to treatment less favourable than that which it accords to investments effected by, and income accruing to investors of any third State.

2. Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, use, enjoyment or disposal of their investment, as well as to any activity connected with these investments, to treatment less favourable than that which it accords to investors of any third State.

3. The treatment mentioned above shall not apply to any advantage or privilege accorded to investors of a third State by either Contracting Party based on the membership of that Contracting Party in Custom Union, Common Market, Free Trade Zone, economic multilateral or international Agreement, or based on an Agreement concluded between that Contracting Party and a third State on Avoidance of Double Taxation or based on cross—border trade arrangement.

4. Notwithstanding preceding paragraphs, investments made by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment according to their applicable laws and regulations.

Article V. Compensation for Damages or Losses

1. Where investments of investors of one Contracting Party in the territory of the other Contracting Party suffer damages or losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the other Contracting Party, the investors concerned shall be accorded treatment, as regards restitution, indemnification, compensation or other settlement, in conformity with general international law and, in any event, not less favourable than that, which would be accorded in the same circumstances to investors of any third State.

2. Without prejudice to the foregoing provisions of this Article, the investors of one Contracting Party shall, in respect of any matter dealt with therein, be accorded in the territory of the other Contracting Party treatment not less favourable than that, which accorded to the investors of any third State.

Article VI. Expropriation

1. In any case where investments of investors of one Contracting Party are subject, directly or indirectly, to any measure of expropriation, the investors concerned shall be accorded in the territory of the other Contracting Party fair and equitable treatment in relation to any such measure. No such measure shall be taken except for public purposes and against payment

of compensation. Such compensation shall be adequate, shall be effectively realizable, shall be freely transferable and shall be made without delay. Such compensation shall amount to the market value of the investment expropriated immediately prior to the date in which the decision to expropriate is announced or made public. Such amount shall be calculated according to the method agreed upon by both Parties that is in conformity with internationally acknowledged evaluation standard method.

2. The legality of any expropriation and the amount and method of payment of compensation shall be subject to review by due process of law.

3. Where a Contracting Party expropriates assets of a company which is incorporated or constituted under the law in force in its territory, and in which an investor of the other Contracting Party owns shares, it shall ensure that the provisions of paragraph 1, of this Article are applied to the extent necessary to guarantee compensation as specified therein to such investor of the other Contracting Party who is the owner of those shares.

Article VII. Repatriation of Investment

1. Either Contracting Party shall within the scope of its laws and regulations in respect to investment by investors of the other Contracting Party grant to those investors without unreasonable delay and after they have complied with all their tax obligations, the transfer of:

- a. Capital and additional capital amounts used to maintain and increase investments;
- b. Net operating profits including dividends and interests in proportion to the share-holding of the foreign participant;
- c. Repayment of any loan and the relevant interest thereof, as far as it is related to the investment;
- d. Payment of royalties and services fees as far as it is related to the investment;
- e. Proceeds from sales of shares owned by the foreign share-holders;
- f. Compensation for damages or losses;
- g. Compensation for expropriation;
- h. Proceeds received by investors in case of liquidation;
- i. The earnings of nationals of one Contracting Party who are allowed to work in connection with investment in the territory of the other Contracting Party.

2. The payments of compensation referred to in points f and g of this Article will be effected in accordance with the terms and conditions to be agreed upon by both Contracting Parties including payments of compensation by installments in a reasonable way.

3. To the extent an investor of either Contracting Party has not made another arrangement with the appropriate authorities of the other Contracting Party in whose territory the investment is situated, currency transfer made pursuant to paragraph 1 of this Article shall be permitted in the currency of the original investment or in any other freely convertible currency. Such transfer shall be made at the prevailing rate of exchange on the date of the transfer with respect to current transaction in the currency to be transferred.

4. Notwithstanding the preceding paragraphs, either Contracting Party may maintain laws and regulations requiring reports of currency transfers.

Article VIII. Subrogation

1. If either Contracting Party or an agency designated by it makes payment to an investor under a policy of insurance covering non-commercial risks, which it has given in respect of any investment of capital or any part thereof in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

- a. The assignment, whether under the law or pursuant to a legal transaction, of any right of a claim from such an investor to the former Contracting Party or its designated agency and;
- b. That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of such an investor.

2. The former Contracting Party or its designated agency shall, accordingly, be entitled to assert, if it so desires, any such right or claim to the same extent as its predecessor in title
3. If the former Contracting Party acquires amounts in the lawful currency of the other Contracting Party or credits thereof by virtue of an assignment under subparagraph a of paragraph 1 of this Article, such amounts and credits shall be freely available to the former Contracting Party for the purpose of meeting its expenditure in the territory of the latter Contracting Party.

Article IX. Settlement of Dispute between Investors and the Contracting Parties

1. Any dispute arising between a Contracting Party and the investor of the other, shall be settled amicably,
2. In the event that such a dispute cannot be settled amicably within six months of the date of a written application, the investor in question may submit the dispute, for settlement to one of the following:
 - a. The Contracting Party's Court, at all instances, having territorial jurisdiction;
 - b. An ad hoc arbitral tribunal specially constituted by the two Contracting Parties;
 - c. Any existing arbitral tribunals agreed upon by both Contracting Parties.
3. While arbitration or judicial proceedings for the settlement of such a dispute are in progress, both Contracting Parties shall refrain from any intervention.

Article X. Settlement of Dispute between the Contracting Parties Concerning Interpretation and Application of the Agreement

Disputes concerning the interpretation or implementation of this Agreement shall be settled amicably through diplomatic negotiations between the Governments of the Contracting Parties.

Article XI. Application of other Provisions

Whenever any issue is governed by this Agreement and by any other Agreement to which both are Parties, more favourable provisions shall be applied to investors.

Article XII. Consultation and Amendment

1. Either Contracting Party may request that a consultation be held on any matter that both Contracting Parties agree to discuss.
2. This Agreement may be amended at any time, if it deems necessary, by mutual consent.

Article XIII. Entry Into Force Duration and Termination

This Agreement shall enter into force thirty days after the date on which the Contracting Parties notify each other that their constitutional requirements have been fulfilled. It shall remain in force for an initial period of ten years. It shall thereafter continue to be in force indefinitely, subject to the right of either Contracting Party to terminate it by twelve months prior notice in writing to the other Contracting Party. The notice may be given at any time after the end of the ninth year. However, with respect to an investment approved while the Agreement is in force its provisions shall continue to have effect for a period of ten years from the date of this termination.

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

Done at Jakarta on 25 October 1991, in duplicate, in the Indonesian, Vietnamese and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the Republic of Indonesia

RADIUS PRAWIRO

Coordinating Minister for Economy, Finance, Industry and Development Supervision
For the Government of the Socialist Republic of Vietnam
TRAN DUC LUONG
Vice Chairman of the Council of Ministers