

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

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

Desiring to intensify economic cooperation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and protection of such investments will be conducive to the expansion of the economic relations between the two Contracting Parties and stimulate investment initiatives,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investment" shall mean: Any kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the other Contracting Party, and shall include in particular, though not exclusively: (a) Movable and immovable property as well as any other property rights, such as mortgage, lien, pledge, usufruct, leasing and similar rights;

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

(c) Title to money or any performance having an economic value;

(d) Intellectual property rights, technical processes, trade names, know-how, good-will and other similar rights; and

(e) Business concessions conferred by law, administrative decisions or contracts, including concessions to search for, cultivate, extract or exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their classification as investment.

(2) The term "investor" shall mean any national or 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 "national" shall mean: (a) In respect of the Kingdom of Sweden: any person who according to the laws of the Kingdom of Sweden is a Swedish national;

(b) In respect of the Republic of Indonesia: any person who according to the laws of the Republic of Indonesia is an Indonesian national.

(4) The term "company" shall mean: (a) In respect of the Kingdom of Sweden: any legal person having its seat in the territory of the Kingdom of Sweden, or in a third country with a predominant interest of an investor of the Kingdom of Sweden;

(b) In respect of the Republic of Indonesia: any company with a limited liability incorporated in the territory of the Republic of Indonesia or any juridical person constituted in accordance with its laws.

(5) The term "returns" shall mean:

The amounts yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties or fees.

(6) The term "territory" shall mean:

(a) In respect of the Kingdom of Sweden, its territory as defined in its laws and the adjacent areas over which it has sovereignty, sovereign rights or jurisdiction as foreseen in the provisions of the United Nations Convention on the Law of the Sea 1982; (b) In respect of the Republic of Indonesia, its territory as defined in its laws and the adjacent areas over which it has sovereignty, sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea 1982.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its legislation.

(2) Each Contracting Party shall at all times ensure fair and equitable treatment of the investments by investors of the other Contracting Party and shall not impair the management, maintenance, use, enjoyment or disposal thereof as well as the acquisition of goods, by unreasonable measures.

(3) In connection with the transport of goods or of personnel associated with an investment, the investor shall have the right to freely select the carrier.

(4) Subject to the laws and regulations relating to the entry and sojourn of aliens, individuals working for an investor of one Contracting Party, as well as members of their household, shall be permitted to enter into, remain on and leave the territory of the other Contracting Party for the purpose of carrying out activities associated with investments in the territory of the latter Contracting Party.

(5) In order to create favourable conditions for assessing the financial position and results of activities related to investments in the territory of one of the Contracting Parties, this Contracting Party shall - notwithstanding its own national requirements for bookkeeping and auditing - permit the investment to be subject also to bookkeeping and auditing according to standards which the investor is subjected to by his national requirements or according to internationally accepted standards (e.g. International Accounting Standards (IAS) drawn up by the International Accounting Standards Committee (IASC)). The result of such accountancy and audit shall be freely available.

(6) The investments made in accordance with the laws and regulations of the Contracting Party in whose territory they are undertaken, enjoy the full protection of this Agreement.

Article 3. Treatment of Investments

(1) Each Contracting Party shall apply to investments in its territory by investors of the other Contracting Party a treatment which is no less favourable than that accorded to investments by investors of third States.

(2) Notwithstanding the provisions of Paragraph (1) of this Article, a Contracting Party (a) Which has concluded an agreement regarding the formation of a customs union, a common market, free-trade area or cross-border arrangement; or

(b) Which has concluded an economic multilateral agreement;

Shall be free to grant more favourable treatment to investments by investors of the State or States which are also parties to the aforesaid agreements, or by investors of some of these States.

(3) The treatment granted to investments under the Commercial Agreements which Sweden has concluded with the Ivory Coast on 27 August 1965, with Madagascar on 2 April 1966 and with Senegal on 24 February 1967 shall not be invoked as the basis of most-favoured-nation treatment under this Article by Indonesian investors.

(4) The provisions of Paragraph (1) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 4. Expropriation and Compensation

(1) Neither Contracting Party shall take any measures depriving, directly or indirectly, an investor of the other Contracting Party of an investment unless the following conditions are complied with: (a) The measures are taken in the public interest and under due process of law;

(b) The measures are distinct and not discriminatory; and

(c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation, which shall be transferable without delay in a freely convertible currency.

(2) The provisions of Paragraph (1) of this Article shall also apply to the returns from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

(3) Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to investors of any third State. Resulting payments shall be transferable in a freely convertible currency without delay.

Article 5. Transfers

(1) Each Contracting Party shall allow the transfer without delay in a freely convertible currency of: (a) The returns accruing from any investment by an investor of the other Contracting Party;

(b) The proceeds from a total or partial liquidation of any investment by an investor of the other Contracting Party;

(c) Funds in repayment of loans related to an investment; and

(d) The earnings of individuals, not being its nationals, who are allowed to work in connection with an investment in its territory and other amounts appropriated for the coverage of expenses connected with the management of the investment.

(2) The Contracting Parties undertake to accord to transfers referred to in Paragraph (1) of this Article a treatment no less favourable than that accorded to transfers originating from investments made by investors of any third State.

(3) Any transfer referred to in this Agreement shall be effected at the official exchange rate prevailing on the day the transfer is made.

Article 6. Subrogation

If a Contracting Party or one of its agencies makes a payment to any of its investors under a guarantee it has granted 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 7, recognize the transfer of any right or title of such an investor to the former Contracting Party or its agency and the subrogation of the former Contracting Party or its agency to any such right or title.

Article 7. Settlement of Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled by negotiations between the Governments of the two Contracting Parties.

(2) If the dispute cannot thus be settled within six months, following the date on which such negotiations were requested by either Contracting Party, it shall at the request of either Contracting Party be submitted to an arbitral tribunal.

(3) The arbitral tribunal shall be constituted for each individual case, each Contracting Party appointing one member. These two members shall then agree upon a national of a third State as their chairman, to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months, and the chairman within four months, from the date either Contracting Party has advised the other Contracting Party of its wish to submit the dispute to an arbitral tribunal.

(4) If the time limits referred to in Paragraph (3) of this Article have not been complied with, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments.

(5) If the President of the International Court of Justice is prevented from discharging the function provided for in Paragraph (4) of this Article or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party, the most senior member of the Court who is not incapacitated or a national of either Contracting Party shall be invited to make the necessary appointments.

(6) The arbitral tribunal shall reach its decision by a majority of votes. Such a decision shall be final and binding on the Contracting Parties. Each Contracting Party shall bear the cost of the member appointed by that Contracting Party as well as the costs for its representation in the arbitral proceedings; the cost of the chairman as well as any other costs shall be borne in equal parts by the two Contracting Parties. The arbitral tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting Parties. In all other respects, the procedure of the arbitral tribunal shall be determined by the tribunal itself.

Article 8. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) Each Contracting Party hereby consents to submit to the International Centre for the Settlement of Investment Disputes (hereinafter referred to as "the Centre") 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 any legal dispute arising between that Contracting Party and an investor of the other Contracting Party concerning an investment of the latter in the territory of the former.

(2) A company which is incorporated or constituted under the law in force in the territory of one Contracting Party, in which before such a dispute arises the majority of shares are owned by investors of the other Contracting Party shall, in accordance with Article 25 (2) (b) of the Convention, be treated, for the purpose of the Convention, as a company of the other Contracting Party.

(3) If any dispute should arise, and agreement cannot be reached or the dispute cannot be finally disposed of within 6 months between the parties to this dispute through pursuit of local remedies or otherwise, then, the investor affected having also consented in writing to submit the dispute to the Centre for settlement by conciliation or arbitration under the Convention, either party may institute proceedings by addressing a request to that effect to the Secretary General of the Centre as provided in Article 28 and 36 of the Convention. In the event of disagreement as to whether conciliation or arbitration is the more appropriate procedure the investor affected shall have the right to choose. The Contracting Party which is a party to the dispute shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the investor which is the other party to the dispute has received in pursuance of an insurance contract an indemnity in respect of some or all of his or its losses.

(4) Neither Contracting Party shall pursue through diplomatic channels any dispute referred to the Centre unless: (a) The Secretary-General of the Centre, or a conciliation commission or an arbitral tribunal constituted by it, decides that the dispute is not within the jurisdiction of the Centre, or

(b) The other Contracting Party should fail to abide by or to comply with any award rendered by an arbitral tribunal.

Article 9. Application of National Law and International Agreements

This Agreement shall in no way restrict the rights and benefits conferred to an investor of one Contracting Party by the provisions of national law of the other Contracting Party or on the basis of commitments made in international agreements which both Contracting Parties have acceded to.

Article 10. Scope of the Agreement

This Agreement shall apply to investments by investors of the Kingdom of Sweden in the territory of the Republic of Indonesia which have been previously granted admission in accordance with Law Number 1 of 1967 concerning Foreign Investment and any law amending or replacing it, and to investments by investors of the Republic of Indonesia in the territory of the Kingdom of Sweden in accordance with its laws and regulations.

Article 11. 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, whenever it is deemed necessary, by mutual consent.

Article 12. Entry Into Force, Duration and Termination

(1) This Agreement shall enter into force on the day the Governments of the two Contracting Parties notify 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 years and shall continue in force thereafter for another period of ten years and so forth unless denounced in writing by either Contracting Party one year before its expiration.

(3) In respect of investments made prior to the date of termination of the present Agreement, the provisions of Article 1 to 10 shall continue to be effective for a further period of fifteen years from that date.

In witness whereof the undersigned, duly authorized to this effect, have signed this Agreement.

Done at Jakarta on 17 September 1992 in duplicate in the English language.

For the Government of the Kingdom of Sweden

PER WESTERBERG

Minister of Industry and Commerce

For the Government of the Republic of Indonesia

ALI ALATAS

Minister for Foreign Affairs