

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND THE GOVERNMENT OF ROMANIA ON THE PROMOTION AND PROTECTION OF INVESTMENT

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

Desiring to encourage and create favourable conditions for investment by investors of one Party in the territory of the other Party based on the principles of mutual respect for sovereignty, equal and mutual benefit and for the purpose of the development of economic cooperation between both countries;

Recognizing that the promotion and protection of such investments will be conducive to the stimulation of business initiative and to foster prosperity in both countries;

Have agreed as follows:

Article I. Definitions

For the purpose of this Agreement:

1. The term "investment" means any kind of asset owned and invested by investors of one 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 as well as 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 related to investment having a financial value;

d. Intellectual property rights including copyright, trade or service marks, patents, industrial designs, know-how, trade secrets, trade names and goodwill;

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

f. Reinvested returns.

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

3. "Nationals" means: a. In respect of the Republic of Indonesia:

Natural person who, according to the laws of the Republic of Indonesia, are Indonesian nationals;

b. In respect of Romania:

Natural person who, according to its laws, are considered to be its citizens;

4. "Companies" means: a. 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;

b. In respect of Romania:

Legal entities which are constituted or otherwise duly organised under the law of Romania and have their seat, together with real economic activities in the territory of Romania.

5. "Returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and other 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 parts of the continental shelf and adjacent seas, over which the Republic of Indonesia has sovereignty, sovereign rights or other rights in accordance with the 1982 United Nations Convention on the Law of the Sea;

b. In respect of Romania:

The territory of Romania, the continental shelf and economic exclusive zone, on which Romania exercises sovereignty, sovereign rights or jurisdiction in accordance with international law;

Article II. Promotion and Protection of Investment

1. Each Party shall encourage and create favourable conditions for investments made in its territory by investors of the other Party, and shall admit such investments in accordance with its laws and regulations.

2. Investments of nationals or companies of either Party shall at all times be accorded fair and equitable treatment and shall enjoy adequate protection and security in the territory of the other Party.

Article III. Scope of Agreement

1. This Agreement shall apply to investments by investors of Romania in the territory of the Republic of Indonesia which have been previously granted admission in accordance with the 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 Romania which have been granted admission in accordance with its laws and regulations in force.

2. This Agreement shall also apply to investments made by investors of either Party in the territory of the other Party prior to the entering into force of this Agreement and accepted in accordance with the legal provisions in force of either Party. However, the Agreement shall not apply to the disputes arising until the entering into force of this Agreement.

Article IV. Most-favoured-nation Provisions

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

2. Neither Party shall in its territory subject investors of the other 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 Party based on the membership of that Party in economic or custom unions, free trade zone, economic multilateral or international agreement, or based on an agreement concluded between that Party and a third State on Avoidance of Double Taxation or based on cross-border trade arrangement.

Article V. Expropriation

1. Investments made by investors of one Party in the territory of the other Party shall not be expropriated, nationalized or subjected to other measures having similar effect (hereinafter referred to as "Expropriation") unless the following conditions are fulfilled: a. The measures are adopted in the public interest and in accordance with due process of law;

b. The measures are not discriminatory compared to the measures taken against the investments and investor of third countries;

c. A proper procedure is established to determine the amount and method of payment of compensation.

2. The compensation shall correspond to the value of the investment subjected to one of the measures mentioned in paragraph (1) of this Article and should be prompt, adequate and effective.

3. The amount of compensation shall be determined in accordance with recognized principles of valuation, such as the fair market value of the investment on the date of expropriation.

In case that the market value cannot be easily ascertained, the compensation shall be determined on equitable principles taking into account, inter alia, the capital invested, its appreciation or depreciation, current returns, replacement value and other relevant factors. 4. Upon the request of the concerned investor, the amount of compensation can be reassessed by a tribunal or other competent body in framework of the jurisdiction of Party in the territory of which the investment has been made.

5. The amount of compensation finally determined shall be promptly paid to the investor, who has the right to transfer without delay these amounts, in freely convertible currencies. In the event that payment of compensation is delayed, the investor shall receive interest for the period of any undue delay in making payment.

Article VI. Compensation for Damages or Losses

Investors of one Party whose investments made in the territory of the other Party suffered losses owing to a war or other armed conflict, a state of national emergency, revolution, revolt, insurrection or other similar events, including losses occasioned by requisitioning, shall be accorded by the latter Party, as regards restitutions, indemnification, compensation or other settlement, a treatment not less favourable than that it accords to the investors of any third State. The amounts resulting from this Article, if any, shall be freely transferable.

Article VII. Transfer

1. Each Contracting Party shall allow the transfer without delay in a freely convertible currency of: a. Returns accruing from any investment by an investor of the other 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 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.

4. "Without delay", in the meaning of this Article is considered the transfers which are made within a period normally required to prepare the formalities of transfer. The time runs from the date when the application together with necessary documents were submitted in the proper way, to the competent authorities and should not exceed, if any case, a period of three months.

Article VIII. Subrogation

In case one Party or any of its designated agency has granted any guarantee against non-commercial risks in respect of an investment by its investor in the territory of the other Party and has made payment to such investor under that guarantee, the other Party shall recognize the transfer of the rights of such investor to the former Party or any of its designated agency. The subrogation of the latter shall not exceed the original rights of such investor. As regards the transfer of payments to be made to the other Party by virtue of such subrogation, the provision of Article VI and VII shall apply respectively.

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

1. For the purpose of solving disputes with respect to investments between a Party and an investor of the other Party, amicable consultations, as far as possible, shall take place between the parties concerned with a view to solving the case.

2. If consultations provided for in paragraph (1) of this Article do not result in a solution within six months from the date of request for settlement, the investor may submit the dispute, at his discretion, for settlement to: a. The Party's Court, at all instances, having territorial jurisdiction; or

b. The International Centre for Settlement of Investment Disputes (ICSID) provided for by the Convention on the Settlement

of Investment Disputes between States and Nationals of other States, opened for signature at Washington, on 18 March 1985; or

c. An ad hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. For the purpose of dispute settlement provided for in paragraph (2.b) of this Article, each Party hereby consents to the submission of an investment dispute to international conciliation or arbitration.

4. In any proceeding involving a dispute relating to an investment, a party shall not assert, as a defence its immunity, counter-claim, right of set-off, that the investor concerned has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

Article X. Settlement of Disputes between the Parties

1. Disputes between the Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic negotiations.

2. If dispute between the Parties can not thus be settled within twelve months, it shall upon the written request of either Party, be submitted to an arbitral tribunal of three members. Each Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be national of a third State.

3. If one of the Parties has not appointed its arbitrator and has not follow the invitation of the other Party to make that appointment within two months, the arbitrator shall be appointed, upon the request of the latter Party, by the President of the International Court of Justice.

4. If both arbitrators cannot reach an agreement on the choice of the chairman within two months after they have been appointed, the chairman shall be appointed upon the request of either Party by the President of the International Court of Justice.

5. If, in the cases specified under paragraph (3) and (4) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is national of either Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if he is a national of either Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Party.

6. Subject to other provisions agreed by the Parties, the tribunal shall determine its procedure.

7. Each Party shall bear the cost of the arbitrator it has appointed and of its representation in the arbitral proceedings. The cost of the chairman and the other costs associated with the conduct of arbitral proceedings shall be borne in equal parts by the Parties.

8. The decisions of the tribunal shall be final and binding for each Party.

Article XI. Application of other Provisions

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

Article XII. Entry Into Force, Duration and Termination

1. This Agreement shall be ratified according to the constitutional or legal procedures of each Party and shall enter into force thirty days after the date of the latest notification by any Party of the accomplishment of its internal procedures of ratification.

2. The Agreement shall remain in force for a period of ten years and shall continue to be in force thereafter for another period of ten years and so forth unless denounce in writing by either Party one year before its expiration. After the expiry of the initial period of its enforcement, the Agreement may be denounced at any time with not less than one year written notice.

3. In respect of investments made prior to the date termination of the present Agreement, the provisions of Article I to XI shall continue to be effective for a further period of ten years from the date of termination of the present Agreement.

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

DONE in duplicate at BUCHAREST on 26 JUNE 1997 in Indonesian, Romanian and English languages.

The texts are equally authentic. If there is any dispute concerning the Interpretation of this Agreement, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

TUNKY ARIWIBOWO

Minister of Industry and Trade

FOR THE GOVERNMENT OF ROMANIA

DAN RADU RUSANU

Secretary of State, Ministry of Finance Member of Government