

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND THE GOVERNMENT OF THE REPUBLIC OF GUYANA ON THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Republic of Indonesia and the Government of the Republic of Guyana, 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 them and in particular for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the Agreement on the Promotion and Protection of such investments will be conducive to the stimulation of investment activities in both countries;

Pursuant to the prevailing laws and regulations in respective 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 Contracting Party, in conformity with the laws and regulations of the latter, including but not exclusively:

(i) Moveable and immovable property as well as other rights such as mortgages, liens or pledges;

(ii) Rights derived from securities such as shares or any kind of participation in companies, bonds and any other form of interest in companies or joint ventures in the territory of the other Contracting Party;

(iii) Claims to money or to any performance having a financial value;

(iv) Intellectual property rights, including but not limited to copyrights, patents, trademarks, industrial designs of integrated circuit, trade secret and right in plants varieties.

(v) Business concessions conferred by law or under contract related to the investment including concessions to search for or exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their character as an investment provided that such alteration has also been approved or admitted under Article II Article X.

2. The term "investor" means:

(i) Any natural person possessing citizenship of a Contracting Party who invests in the territory of the other Contracting Party in accordance with the laws and regulations of that Contracting Party;

(ii) Legal persons of either Contracting Party which are established or incorporated under the laws of that Contracting Party and their headquarters or their real economic activities are located in the territory of that Contracting Party.

3. "Returns" means the amounts yielded from an investment and in particular, though not

Exclusively, includes profit, interest, capital gains, dividends, royalties and fees.

4. "Territory" shall mean:

(i) 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 jurisdiction in accordance with the 1982 United Nations Convention on the Law of the Sea;

(ii) In respect of the Republic of Guyana, territory as referred to in Part I, Chapter 1, Article II of the Constitution of the Republic of Guyana, including the territorial sea and any maritime area situated beyond the territorial sea of the Republic of Guyana which has been designated under the national laws of the Republic of Guyana as an area which the Republic of Guyana exercises rights with regards to the sea-bed and sub-soil and the natural resources.

## **Article II. Promotion and Protection of Investments**

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. Without prejudice to its own laws and regulations, neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the operations, management, maintenance, use, enjoyment or disposal of investments in its territory by the investors of the other Contracting Party.

3. Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy adequate protection and security in the territory of the other Contracting Party.

4. The Contracting Parties may periodically consult concerning investment opportunities in various sectors of their respective economies to determine where investments may be most beneficial in their mutual interest.

## **Article III. Most Favoured Nations Provisions**

1. Each Contracting Party shall accord to the investments of investors from the other Contracting Party, treatment which in any case shall not be less favourable than that accord to investments of investors of any third state.

2. Each Contracting Party shall accord nationals or companies of the other Contracting Party, as regards their activity in connection with investment in its territory, treatment which in any case shall not be less favourable than it accords to its own nationals or companies of any third States.

3. If a Contracting Party has accorded special advantages to investors of any third state by virtue of agreements establishing customs unions, economic unions, monetary unions or similar institutions or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to investors of the other Contracting Party.

4. Nothing in this Agreement shall oblige a Contracting Party to extend to investors of the other Contracting Party, any special advantages by virtue of any international agreements or arrangements or any domestic legislation relating wholly or mainly to double taxation.

5. The provisions of this Article relative to the grant of treatment not less favourable than that accorded to investors of either Contracting Party shall not prevent either Contracting Party from according special incentives, allowed under Article III of the GATT, to its own investors in order to stimulate the creation and growth of local industries, provided those incentives are considered carefully on each occasion by the Contracting Party concerned, which shall in particular, ensure that they do not significantly affect the activities or investments of investors of the other Contracting Party.

## **Article IV. Expropriation**

1. Neither Contracting Party shall take any measures of expropriation, nationalization or any other dispossession, having the effect equivalent to expropriation or nationalization against the investments of an investor of the other Contracting Party except under the following conditions:

(i) The measures are taken for a lawful purpose or public use and under due process of the law;

(ii) The measures are non-discriminatory;

(iii) The measures are accompanied by prompt and effective compensation according to the market value of the expropriated investment immediately before the impending expropriation was publicly announced, shall include interest from the date of expropriation at a normal commercial rate, shall be paid without delay and shall be effectively realizable and freely transferable in convertible currencies. In determining the market value, due weight shall be given to any factors

which might have affected the value of the investment before the measure was publicly announced.

2. The investors affected shall have a right under the law of the Contracting Party making the expropriation to prompt review by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

## **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 treatment as regards restitution, indemnification, compensation, or other settlement which shall not be less favourable than that which the latter contracting Party accords to investments of its own investors or to investors of any third state.

## **Article VI. Transfers**

1. Each Contracting Party shall grant the investors of the other Contracting Party, in accordance with its laws and regulations, the right to transfers related to investments, in particular, though not exclusively of:

(i) Profits, Interests, dividends or other current Income;

(ii) Funds which are necessary for the acquisition of raw or auxiliary materials, semi-fabricated or finished products or to replace capital assets in order to safeguard the continuity of an investment;

(iii) Funds in repayment of loans related to the investment;

(iv) Royalties or fees;

(v) Earnings of natural persons of the other Contracting Party who are employed in connection with the investment in accordance with the work permit laws of the other Contracting Party;

(vi) Proceeds from the sale or liquidation of the investment;

(vii) Compensation for losses;

(viii) Compensation for expropriation.

2. All transfers shall be made at the prevailing rate of exchange on the date of transfer with respect to current transaction in the currency to be transferred.

## **Article VII. Subrogation**

1. If the investments of an investor of one Contracting Party are insured against non-commercial risks under a system established by law, any subrogation of the insurer or re-insurer to the rights of the said investors pursuant to the terms of such insurance 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 subrogation rights or claims, the Contracting Party exercising such rights or claims shall disclose the coverage claims arrangement with its investors to the other Contracting Party.

## **Article VIII. Settlement of Disputes between the Contracting Parties**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall as far as possible be settled amicably through negotiations

2. If the dispute cannot be settled within six months from the start of the negotiations, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal in accordance with the provisions of this Article.

3. The Arbitral Tribunal shall be constituted on the following way:

Each Contracting Party shall appoint an arbitrator and these two arbitrators shall then select a national of a third state who shall act as a chairman. The arbitrators shall be appointed within three months and the chairman within five months from the date on which either of the two Contracting Parties informed the other Contracting Party of its intention to submit the

dispute of arbitration.

4. If within the periods specified in paragraph 3 of this Article, the necessary appointments have 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 appointments.

5. The Arbitral Tribunal shall issue its decisions on the basis of the rules contained in this Agreement as well as the principles of international law.

6. The Arbitral Tribunal shall determine its own procedure and shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties.

7. Each Contracting Party shall bear the cost of its own arbitrator and its counsel in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties.

## **Article IX. Settlement of Disputes between Investors and a Contracting Party**

1. Any dispute which arises within the terms of this Agreement concerning an investment between an investor of one Contracting party and the other Contracting Party shall, if possible, be settled amicably.

2. If the dispute cannot be settled within six months following the date on which the dispute has been raised by either party, it may be submitted to:

(i) The judicial procedures provided by the Contracting Party in whose territory the investment was made, or

(ii) International arbitration according to the provisions of Paragraph 3.

3. Where a dispute has been raised by an investor, and the parties disagree as the choice of (i) or (ii), the choice of the investor shall prevail.

4. Pursuant to Paragraphs 2 and 3, where an investor or a Contracting Party has submitted a dispute to the aforementioned competent tribunal of the Contracting Party where the investment has been made or to international arbitration, this decision shall be final.

5. In case of international arbitration, the dispute shall be submitted either to:

(i) The International Centre for the Settlement of Investment Disputes (ICSID), created by the 'Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature in Washington D.C. on 18 March 1965;

(ii) An ad hoc arbitral tribunal set up in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law.

6. The arbitration tribunal shall decide in accordance with the provisions of this Agreement, the laws of the Contracting Party involved in the dispute, the terms of any specific agreement concluded in relation to such an investment and the relevant principles in international law.

7. The arbitration decisions shall be final and binding for the Parties to the dispute. Each Contracting Party shall execute them in accordance with its laws.

## **Article X. Applicability of this Agreement**

1. This Agreement shall only apply:

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

(ii) In respect of investments in the territory of the Republic of Guyana, 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 Guyana.

2. The provisions of paragraph 1 shall also apply to investment made by investors of either Contracting Party, in the territory of the other Contracting Party before the coming into force of this Agreement.

3. This Article shall not apply to any dispute, claim or difference which arose before this Agreement came 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 by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulations 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 opportunity for such consultations.

2. This Agreement may be amended at any time by the mutual consent of both Contracting Parties.

## **Article XIII. Relations between Contracting Parties**

The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

## **Article XIV. Entry Into Force, Duration and Termination**

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

2. This Agreement shall remain in force for a period of 10 (ten) years and shall continue in force thereafter for a 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 period of 10 (ten) years from the date of termination.

IN WITNESS WHEREOF, THE UNDERSIGNED, being duly authorized by their respective Governments, have signed this Agreement.

Done in duplicate at ..... this 30th January day of January in the year 2008

In the Indonesian and English languages, both texts being equally authentic. In the event of a divergence of interpretation, the English text shall prevail.

Signed

Signed

Drs. Suprijanto Muhadi Ambassador Extraordinary and Plenipotentiary For the Government of the Republic of Indonesia

Hon. Dr. Henry Jeffrey Ministry of Foreign Trade & International Cooperation of the Government of the Republic of Guyana