

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

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

Desiring to intensify economic cooperation between the two countries;

Intending to create favorable conditions for investing in investors from both countries;

Recognizing that the promotion and mutual protection of such investments, under international agreements, will stimulate individual entrepreneurial initiatives and promote economic prosperity in both parties,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1 . "Investment" means any asset invested or reinvested by investors of one Party to another within the territory of the other, in accordance with the laws and regulations of the latter, including, but not limited to:

- a) Movable and immovable property, and any other right, such as mortgages, pledges, privileges and similar rights;
- b) Shares, shareholdings and bonds of companies or interests in the ownership of such companies as well as government bonds and public securities in general;
- c) Receivables for sums used to generate resources of economic value, as well as receivables for any performance of economic value;
- d) Intellectual property rights, including copyrights, trademarks, patents, industrial designs, know-how, trade secrets, trade names and goodwill;
- e) Concessions granted by law or by contract, including those for prospecting, extraction or exploitation of natural resources.

2 . "Investor" means any natural or legal person or corporation having a nationality in a Party and who has made or makes investments in the territory of the other Party.

3 . "Legal person" or "company" means:

a) For the Italian Republic:

Any limited liability company established in the territory of the Italian Republic, or any legal person recognized in accordance with its law;

b) For the Republic of Indonesia:

Any limited liability company established in the territory of the Republic of Indonesia, or any legal person recognized in accordance with its law.

4 . "Physical person" means:

a) For the Italian Republic:

Persons who, in accordance with the laws of the Italian Republic, are Italian citizens;

b) For the Republic of Indonesia

People who, in accordance with the laws of the Republic of Indonesia, are Indonesian citizens.

5. For "profits" or "income" means the sums earned or realized, but not yet received, from an investment and, in particular but not exclusively, include profits, interest, capital gains, dividends, royalties or various fees.

6. "Territory" means:

a) For the Italian Republic:

In addition to the land within the land borders, also marine and submarine areas on which the Republic of Italy has sovereignty or exercise, under international law, sovereignty or jurisdiction;

b) For the Republic of Indonesia:

The territory of the Republic of Indonesia, as defined by its laws and adjacent areas on which the Republic of Indonesia has sovereignty, sovereignty or jurisdiction in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea.

## **Article 2. Promotion and Investment Protection**

1. Each Party will encourage as much as possible the investors of the other Party to make investments in their territory, will allow them in accordance with their laws and regulations and will grant such investments a fair and fair treatment.

2. Each Party shall ensure that the management, maintenance, enjoyment, transformation, termination and liquidation of investments made in its territory by investors of the other, as well as the companies in which they are made, are in no way subject to any measures Unjustified or discriminatory or, in general, less favorable treatment than that accorded to other foreign investors.

## **Article 3. Purpose of the Agreement**

This Agreement shall apply to Investments of Investors of the Republic of Italy in the territory of the Republic of Indonesia that have been previously admitted, in accordance with Law No. 1 of 1967 on Foreign Capital Investments and any other law that modifies or replaces it Either upon or after the entry into force of this Agreement, as well as on the investments of investors of the Republic of Indonesia in the territory of the Italian Republic which have been recognized by the competent Italian Authorities as proposed in accordance with any specific Italian law and regulation. Italian investments made in the Republic of Indonesia and recognized by the Indonesian Authorities prior to the entry into force of Law No. 1 of 1967 on Foreign Capital Investments, Italian investments made after the entry into force of the said law but before the entry In force, as well as Italian investments not yet officially recognized on the date of entry into force of this Agreement, may obtain admission in accordance with the provisions of Law No. 1 of 1967 on foreign capital investments.

## **Article 4. Most Favored Country Clause**

1. No Party shall, in its own territory, invest the investments and the income of the investors of the other Party, to a less favorable treatment than that reserved for investments and the related incomes of investors of any third State.

2. In its territory, no Party shall submit to investors of the other Party as regards the management, use, enjoyment or assignment of their investments and of any activities with which they are connected, to a treatment less favorable than that accorded to them To citizens or investors of any third State.

3. Regardless of what is stated in the preceding paragraphs, investments made by investors of one Party in the territory of the other Party shall be accorded fair and equitable treatment, no less favorable than that accorded to their own citizens and their companies, Own current laws and regulations.

4. The above treatment will not apply to the advantages and privileges that a Contracting Party recognizes as investors of a third country as a result of its participation in Customs Unions, Common Market Associations, Free Trade Areas, International Multilateral Economic Agreements or Effect of Agreements concluded between this Party and a third State in order to avoid double taxation or to facilitate cross-border trade.

## **Article 5. Indemnities for Damages or Losses**

Where Investors of a Party whose investments in the territory of the other have suffered losses due to wars or other armed conflicts, revolutions, national emergencies, riots, insurrections or tumults occurring in the territory of this second Party, Lastly, as far as restitution, compensation, compensation or other form of accommodation is concerned, adequate compensation. This compensation shall be no less favorable than that Party shall accord to its own nationals and, in any case, to investors of. Every third country. The related payments will be freely transferable in convertible currency without undue delay.

## **Article 6. Nationalization, Espionage and Payment of Compensation**

1 . Investments of citizens or companies of both Parties shall not be nationalized, expropriated or subjected to measures having effects similar to nationalization or expropriation (hereafter defined as expropriation) in the territory of the other Party, except for public purposes Referring to the internal needs of the Expropriating Party and against full, immediate, and effective compensation.

Such compensation will amount to the real market value of the expropriated investment before the expropriation decision has been announced or made public. This amount will be calculated according to methods agreed by both parties in accordance with internationally accepted valuation standards. If the real market value can not be readily verified, compensation will be determined on the basis of fair value objectives, taking into account, inter alia, invested capital, revaluation or impairment, current gains, amortization value As well as any other relative mutually accepted factor.

Compensation will be made without undue delay, will be effectively charged and freely transferable.

Compensation will include interest calculated at the applicable agreed rate of interest taking into account the prevailing rates matured from the date of expropriation up to the date of payment unless the investor has retained the benefit of the expropriated investments until the date of such expiry compensation.

The legitimacy of any expropriation and its procedures as well as, without prejudice to the rights of the investor concerned to resort to the means of dispute settlement referred to in Article 10 of this Agreement, the amount and method of payment of damages shall be subject In accordance with prescribed legal procedures in accordance with the applicable laws and regulations of the Expropriating Party.

2 . If a Party expropriates the assets of a company, registered or constituted under applicable law, in any part of its territory and in which citizens or companies of the other Party have shares, it shall ensure that the provisions of paragraph 1 of this Article are Applied in such a manner as to guarantee the owners of such actions the compensation provided for in the said paragraph. The provisions of paragraph 1 of this Article shall also apply to income from investment if they are reinvested in the investment. Paragraph 1 of this Article shall be applied in a manner to guarantee the owners of such actions the compensation provided for in that paragraph. As foreseen in paragraph 1 of this Article, it will also apply to income from investment, if reinvested in the investment.

## **Article 7. Investor Repatriation**

1 . Each of the Parties under their own laws and regulations regarding investments made by investors of the other will ensure that these investors, once they have fulfilled all their tax obligations, will transfer the following:

To . Capital and additional capital shares used to hold investments;

B. Net profits accrued in proportion to shares held by the foreign shareholder;

C. Repayments of any loan and related interest as they are part of the investment approved by the Government to which they relate;

D. Royalties payments, as they are part of the investment, approved by the government, to which they relate;

Is . Revenues deriving from the sale of shares held by foreign shareholders;

F. Damages in the event of damage or loss;

G. Compensation in case of expropriation;

H. Revenues received by foreign shareholders in the event of liquidation.

2 . Where a national or a company of one of the Parties has not entered into a different agreement with the competent

authorities of the other Party in whose territory the investments are located, the currency transfers to be made in accordance with paragraph 1 of this Article shall be permitted in the currency Original investment or any other freely convertible currency. Such transfers shall be made at the exchange rate prevailing at the date of the transfer and according to the current transactions in the currency to be transferred. Paragraph 1 of this Article shall be permitted in the original investment currency or any other freely convertible currency. Such transfers will be made at the exchange rate prevailing at the date of the transfer and according to the current transactions in the currency to be transferred.

3 . Each Party may maintain laws and regulations that require administrative information on currency transfers.

## **Article 8. Subrogation**

Where a Party or its institution has granted a guarantee against non-commercial risks for investments made by its investor in the territory of the other Party and has made payments to that investor on the basis of the guarantee granted, the other Party shall recognize the The rights of the investor insured to the Guarantee Party and the surrogate of the investor shall not exceed the original rights of the investor. As regards the payments to be made to the Guaranteeing Party or its establishment by virtue of such surrogate, the provisions of Articles VI and VII of this Agreement shall respectively be applied.

## **Article 9. Transfer Mode**

The transfers referred to in Articles V, VI, VII and VIII shall take place without undue delay and in any case within six months, provided that the amount has been established and all tax obligations have been met. In any case, the transfers referred to in Article VI will be finalized after the completion of the compensation procedures and the determination of the relevant amount. Transfers will be made in convertible currency and at the prevailing exchange rate applicable on the date of the transfer.

## **Article 10. Rules for Disputes between Investors and Parties**

- 1 . Disputes between a Party and investors of the other party will, as far as possible, be resolved amicably.
- 2 . If such disputes can not be resolved amicably within six months of the date of a written request, the interested investor may, for a resolution, choose to:
  - a) To the Court of First Instance, and its subsequent claims, of the Contracting Party competent by territory;
  - b) To the "International Settlement of Investment Disputes", for the application of the arbitration procedures provided for in the Washington Convention of 18 March 1965 on the "Settlement of Contracts concerning Investments between States and Citizens of Other States".
- 3 . A legal person established or recognized in accordance with the law in force in the territory of one of the Parties and in which, before a dispute arises, the majority of the shares being owned by investors of the other party shall be considered, Application of the conciliation and arbitration procedures provided for in the Washington Convention of 18 March 1965 and the Arbitral Rules of the United Nations International Commercial Law as a legal entity of this Party.
- 4 . The Party which is party to a dispute at any stage of the procedure or the execution of an arbitration award can not oppose the fact that the investor, in the same dispute, has obtained, by way of an insurance contract, damages For all or part of your damages or losses.
- 5 . In the event of objection or difficulty in submitting the dispute to the "International Tribunal for the Settlement of Disputes", the matter may be referred to an ad hoc Tribunal in accordance with the Arbitration Rules of the "UN Commission for International Commercial Law" Contained in Resolution 31/98 of 15 December 1976 and in accordance with the provisions of the following Article XI, if applicable Article XI, if applicable.
- 6 . As long as judicial proceedings are initiated for the resolution of a dispute, both parties will refrain from any kind of intervention.

## **Article 11. Rules of Disputes between the Parties**

- 1 . Any controversy that may arise between the Parties concerning the interpretation and application of this Agreement shall, as far as possible, be resolved amicably by diplomatic means.

2 . In the event that the dispute can not be resolved within six months of the date on which one of the Parties has made a written request to the other Party, it shall, on the initiative of one of them, be subject to the jurisdiction of an ad hoc Arbitral Tribunal As provided for in the provisions of this Article.

3 . The Arbitral Tribunal shall be constituted as follows: within two months from the date of receipt of the request for arbitration, each Party shall appoint a member of the Tribunal. These two members will then, as President, be a national of a third State. The Chairman shall be appointed within three months of the nomination of the other two members.

4 . If, within the time limit referred to in paragraph 3 of this Article, appointments have not yet been made, each of the two Parties, in the absence of other Agreements, may apply to the President of the International Court of Justice within three months. If he is a citizen of one of the Parties, or for any other reason can not accept the said assignment, the request will be made to the Vice President of the Court. Whenever the Vice President is a citizen of either Party or for any other reason can not be accepted by him, the senior member of the International Court of Justice who is not a citizen of one of the Parties shall be invited to make such appointments (3) of this Article, appointments have not yet been made, each of the two Parties, in the absence of other Agreements, may apply to be made to the President of the International Court of Justice within three months. If he is a citizen of one of the Parties, or for any other reason can not accept the said assignment, the request will be made to the Vice President of the Court. Whenever the Vice President is a citizen of either Party or for any other reason can not be accepted by him, the senior member of the International Court of Justice who is not a citizen of one of the Parties shall be invited to make such appointments .

5 . The Arbitral Tribunal will decide by majority vote and its decisions will be binding. Each Party shall bear the expenses of its Referee and those for his participation in the hearings. The expenses for the President and the remaining expenses shall be borne by the two Parties equally.

However, the Arbitral Tribunal may, by its own decision, decide that a larger proportion of the expenditure shall be sustained by either Party and that decision shall be binding on both Parties. The Arbitral Tribunal will establish its own procedures.

## **Article 12. Application of Various Provisions**

1 . If a matter is governed both by this Agreement and by any other International Agreement to which the two Contracting Parties have acceded, or otherwise regulated by rules of general international law, the Contracting Parties and their investors shall apply the provisions from time to time More favorable.

2 . If a Contracting Party, by virtue of laws, regulations, provisions or other general rules has adopted, for investors of the other, more advantageous treatment than that provided for in this Agreement, it will be more favorable to them than those provided for by this Agreement.

## **Article 13. Entry Into Force, Duration and Expiry**

1 . This Agreement shall enter into force three months after the date on which the two Contracting Parties have been notified of the completion of their respective internal ratification and execution procedures. It shall remain in force for a period of 10 years and shall remain in force for a further period of 10 years and so on, unless one of the two Parties has denounced it in writing one year before the expiry date.

2 . For investments made prior to the expiry date of this Agreement, the provisions of Articles I to XII shall remain in force for another 10 years from the date of expiry of this Agreement. Articles I to XII shall remain in force for another 10 years From the date of expiration of this Agreement.

Made in triplicate in Rome on 25 April 1991 in Italian, Indonesian and English. The three texts are equally authentic. In the case of dispute over the interpretation, the English text will be authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC