

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF SAUDI ARABIA AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Kingdom of Saudi Arabia and the Government of the Republic of Indonesia (hereinafter referred to as the Contracting Parties);

Bearing in mind the friendly and cooperative relations existing between the two Countries;

Intending to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party on the basis of mutual benefit; and

Recognizing that the Agreement on the Promotion and Reciprocal Protection of Investments will be conducive to the stimulation of investment and to increase the prosperity of both Countries;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "investment" means every kind of asset, owned or controlled by an investor of a Contracting Party in the territory of the other Contracting Party according to its laws and regulations and in particular, but not exclusively, includes:

- a) movable and immovable property as well as any other rights in rem, such as mortgages, leases, liens and pledges and similar rights;
- b) shares, stocks, bonds and debentures of companies and other kinds of rights or interests in companies as well as securities issued by a Contracting Party or any of its investors;
- c) claims to money such as loans or to any performance having an economic value, associated with an investment;
- d) intellectual property rights, including but not limited to copyrights, patents, know-how, trademarks, trade names, goodwill, industrial designs, layout designs of integrated circuits, geographical indications and protection of undisclosed information;
- e) any rights conferred by law or under public contract or any licenses, permits or concessions issued by a Contracting Party according to its law.

Any alterations of the form in which assets are invested or reinvested shall not affect their classification as investment, provided that such alteration is not in conflict with the laws and regulations of the Contracting Party in the territory of which the investment is made.

2. The term returns means the amounts yielded by an investment in particular including, but not limited to profit, dividends, royalties, capital gains and any similar payments.

3. The term "investor means:

a) In respect of the Kingdom of Saudi Arabia;

i. natural persons possessing the nationality of the Kingdom of Saudi Arabia in accordance with the law of the Kingdom of Saudi Arabia;

ii. any entity having or having no legal personality and constituted in accordance with the laws of the kingdom of Saudi Arabia and having its head office in its territory such as corporations, enterprises, cooperatives, companies, partnerships, offices, establishments, funds, organizations, business associations and other similar entities irrespective of whether or not they are of limited liability;

iii. the Government of the Kingdom of Saudi Arabia and its financial institutions and authorities such as the Saudi Arabian Monetary Agency, public funds and other similar governmental institutions existing in Saudi Arabia.

b) In respect of the Republic of Indonesia:

i. natural person having the nationality of the Republic of Indonesia;

ii. legal person or legal entity constituted under the law of the Republic of Indonesia; including Government and non Government agencies.

4. The term territory means:

i. The territory of the Kingdom of Saudi Arabia means in addition to the zones contained within its land boundaries, the marine and submarine zones over which it exercises sovereignty and sovereign or jurisdictional rights under international law.

ii. In respect of the Republic of Indonesia:

The territory of the Republic of Indonesia as defined in its laws including 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.

Article II. Promotion and Protection

(1) Each Contracting Party shall in its territory promote investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations. It shall in any case accord such investments fair and equitable treatment.

(2) Investments by investors of either Contracting Party shall enjoy protection and security in the territory of the other Contracting Party;

(3) Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

Article III. National and Most-favoured-nation Treatment

(1) Each Contracting Party shall grant investments once admitted and investment returns of the investors of the other Contracting Party a treatment not less favourable than that accorded to investments and investment returns of investors of any third state.

(2) In accordance with its laws and regulations, each Contracting Party shall grant investments once admitted and investment returns of the investors of the other Contracting Party a treatment not less favourable than that accorded to investments and investment return of its investors.

(3) Each Contracting Party shall accord the Investors of the other Contracting Party in connection with the management, maintenance, use, enjoyment or disposal of investments or with the means to assure their rights to such investments like transfers and indemnification or with any other activity associated with this in its territory, treatment not less favourable than the treatment it accords to its investors or to the investors of a third State, whichever is more favourable.

(4) The provisions in paragraph (1), (2) and (3) of this Article shall not, however, relate to privileges granted by either Contracting Party to the investors of a third State by virtue of its membership of, or association with, a customs union, an economic union, a common market or a free trade area.

(5) The provision of this Article shall not apply to tax matters.

Article IV. Expropriation

(1) Investments by investors of either Contracting Party shall not be expropriated, nationalized, or subjected to any other

measures, the effects of which would be tantamount to expropriation or nationalization by the other Contracting Party except for the public benefit of that Contracting Party and against prompt, adequate and effective compensation, provided that these measures are not discriminatory and in accordance with domestic laws of general application.

(2) The compensation shall be equivalent to the market value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure has become publicly known. Such compensation shall be paid without delay and shall carry a rate of return determined on the basis of the market prevailing rate of return from the date of expropriation until the date of payment, it shall be effectively realizable and freely transferable.

(3) Provision shall have been made in an appropriate manner at or prior to the time of expropriation, nationalization or comparable measure for the determination and payment of such compensation. The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review under due process of law.

Article V. Compensation for Losses

Investors of either Contracting Party whose investments suffer losses in connection with their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, shall be accorded treatment not less favourable by such other Contracting Party than that accorded by the latter Contracting Party to its investors or to the investors of third State as regard to restitution, indemnification, or compensation or other valuable consideration. Such payments shall be freely transferable.

Article VI. Subrogation

If a Contracting Party or any designated agency makes a payment to an investor under a guarantee it has assumed in respect of an investment made by that investor in the territory of the other Contracting Party the latter Contracting Party shall recognize the transfer of any rights or claim from the investor or any of its affiliates to the former Contracting Party or any designated agency.

Article VII. Transfer

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments in connection with investments and investment returns they hold in the territory of the other Contracting Party, in particular:

- a) the capital and additional amount to maintain or increase the investment;
- b) the returns;
- c) the repayment of loans;
- d) the proceeds from the liquidation or the sale of the whole or any part of the investment;
- e) the compensation provided for in Article IV and V.

(2) Transfer under this Article shall be made without delay at the prevailing rate of exchange applicable on the date on which the investor applies for the related transfer.

(3) In the absence of a market rate of exchange, the rate of exchange shall correspond to the cross rate-obtained from those rates which would be applied by the International Monetary Fund for conversions of the currencies concerned into Special Drawing Rights.

(4) A transfer shall be deemed to have been made "without delay within the meaning of this Article if effected within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the relevant request has been submitted and may on no account exceed one month.

Article VIII. Application of other Provision

If the provisions of the law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this 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 this Agreement, such regulation shall to extent that it is more favourable prevail over this Agreement.

Article IX. Applicability of this Agreement

This Agreement shall apply to all investments, whether made before or after the date of entry into force of this Agreement, by investors of either Contracting Party in the territory of the other Contracting Party consistent with the latter's laws and regulations.

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

(1) Disputes between the Contracting Parties concerning the interpretation or application of the Agreement should be settled amicably by the two Contracting Parties through diplomatic channels.

(2) If a dispute cannot thus be settled within six months, it shall upon the request of either Contracting Party be Submitted to an arbitration tribunal.

(3) Such an Arbitral Tribunal shall be constituted for each individual case in the following way; within three months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. Those two members shall then select a national of a third State who, on approval by the two Contracting Parties, shall be appointed chairman of the Tribunal. The chairman shall be appointed within two months from the date of appointment of the other two members.

(4) If the periods specified in paragraph 3 above have not been observed, either Contracting Party may, in the absence of any other agreed arrangement, invite the President of the International Court of Justice to make the 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 should 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 Court next in seniority who is not a national of either Contracting Party shall make the necessary appointments.

(5) The arbitration tribunal shall reach its decisions by a majority of votes. Such decisions shall be final and binding. Each Contracting Party shall bear the cost of its own member and the cost of counseling in the arbitration proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitration tribunal may make a different regulation concerning costs. In all other respects, the arbitration tribunal shall determine its own procedure.

Article XI. Settlement of Disputes between Investors and the Contracting Party

(1) Disputes concerning investments between a Contracting Party and an investor of the other Contracting Party, in connection with these investments in the territory of the former Contracting Party should be amicably settled through negotiations and consultations.

(2) If the dispute cannot be settled in the way prescribed in paragraph (1) of this Article within six months from the date on which the request for the settlement has been submitted, it shall be at the request of the investor filed to the competent court of law of the Contracting Party in whose territory the investment was made, or filed for arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington D.C. on 18th March 1965.

(3) Once the investors submitted the dispute to a competent court of law of the Contracting Party in whose territory the investment was made or to international arbitration, the selection shall be final. If the dispute is filed for arbitration the award shall be binding and shall not be subject to any appeal or remedy other than those provided for in the said Convention. The award shall be enforced in accordance with domestic law.

Article XII. Consultation and Amendment

(1) Either Contracting Party may request for consultations to be held on any matter concerning this Agreement. The other Contracting Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

(2) This Agreement may be amended by mutual written consent of both Contracting Parties at any time after it is in force. Any alteration or modification of this Agreement shall be done without prejudice to the rights and obligations arising from this agreement prior to the date of such alteration or modification until such rights and obligations are fully implemented.

Article XIII. Entry Into Force, Duration and Termination

(1) This Agreement shall enter into force thirty days after the date of the latest notification by any Contracting Party of the accomplishment of its internal procedures of ratification.

(2) This Agreement shall remain in force for a period of (10) years. It shall remain in force thereafter until either Contracting Party notifies the other Contracting Party in writing of its intention to terminate this Agreement. The notice of termination shall become effective one year after the date of notification.

(3) In respect of investments made prior to the date to termination of this Agreement, the provisions of Articles I to XII shall continue to be effective for a further period of twenty years from the date of termination of this Agreement.

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

Done at Jeddah on 15 th September 2003 in duplicate in the Arabic, Indonesian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the Republic of Indonesia

Signed

H.E. Mr. Muhammad Maftuh Badyuni

Ambassador

Extraordinary and Plenipotentiary

of the Republic of Indonesia

to the Kingdom of Saudi Arabia

concurrently to

the Sultanate of Oman

For the Government of the Kingdom of Saudi Arabia

Signed

H.E. Dr. Ibrahim Bin Abdul Aziz Al-Assaf

Minister of Finance of the

Kingdom of Saudi Arabia