

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND THE GOVERNMENT OF THE KINGDOM OF THAILAND FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

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

Desiring to intensify economic cooperation between both countries,

Bearing in mind the friendly and cooperative relations existing between both Contracting Parties,

Intending to create favourable condition for investments by investor of one Contracting Party in the territory of the other Contracting Party,

Recognising that the encouragement and protection of such investments under this Agreement will be conducive to the stimulation of individual business initiative and will increase prosperity in both countries,

Considering the Agreement among the Governments of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Kingdom of Thailand for the Promotion and Protection of Investments done in Manila on 15th December 1987, as amended by the Protocol to Amend the Agreement among the Governments of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Kingdom of Thailand for the Promotion and Protection of Investments done in Jakarta on 12th September 1996;

Have agreed as follows :

Article I. Definitions

For the purpose of this Agreement :

1. The term "investment" shall mean every kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party, in accordance with the respective laws and regulations of the latter Contracting Party, including, in particular, but not exclusively: (a) Movable and immovable property and any other property rights such as mortgages, liens, pledges, and usufructs;

(b) Shares, stocks and debentures of companies or interests in the property of such companies;

(c) Claims to money or to any performance under contract having financial value;

(d) Intellectual property rights, technical processes, know how, goodwill; and

(e) Business concessions conferred by law or under contract, 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 character as an investment, provided that such alteration has also been approved or admitted under Article II.

2. The term "investor" shall mean: (a) Any natural person having the nationality of either Contracting Party in accordance with its laws who invests in the territory of the other Contracting Party; or

(b) Any legal person, company, corporation, partnership, or other business association, incorporated or constituted in the territory of either Contracting Party in accordance with its laws and regulations who invests in the territory of the other Contracting Party.

3. The term "returns" shall mean amounts yielded by an investment, particularly, though not exclusively, shall include profits, interest, capital gains, dividends, royalties or fees.

4. The term "freely usable currencies" shall mean currencies that the International Monetary Fund determines, from time to time, that (i) is, in fact, widely used to make payments for international transactions, and (ii) is widely traded in the principal exchange markets.

5. The term "territory" shall mean, in respect of each Contracting Party, the territory as defined in its laws, and part of the continental shelf and adjacent seas over which each Contracting Party has sovereignty, sovereign rights or jurisdiction in accordance with international law.

Article II. Applicability of this Agreement

1. This Agreement shall apply to investments by investors of the Kingdom of Thailand in the territory of the Republic of Indonesia which have been previously granted admission in accordance with the Indonesian law on 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 Thailand which have been specifically approved in writing by competent authorities of Thailand in accordance with the applicable laws and regulations of the Kingdom of Thailand and any laws amending or replacing them.

2. This Agreement shall apply to all investments, whether made before or after the date of entry into force of this Agreement, but the provisions of this Agreement shall not apply to any dispute, claim or difference which arose before its entry into force.

Article III. Promotion and Protection of Investments

1. Either Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to invest in its territory, and shall admit such investment in accordance with its laws and regulations.

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

Article IV. Treatment of Investments

1. Each Contracting Party shall in its territory accord to investors of the other Contracting Party as regards the management, maintenance, use, enjoyment or disposal of their investment, treatment which is fair and equitable and no less favourable than that which it accords to the investors of any third State.

2. Investments made by investors of either Contracting Party in the territory of the other Contracting Party, as also the returns therefrom, shall be subject to a treatment no less favourable than that accorded to investments and returns made by the investors of any third State in accordance with the existing laws, rules and regulations.

3. The provisions of this Agreement relative to the granting of treatment no less favourable than that accorded to the investors of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

a). The formation or extension of a customs union or a free trade area or a common external tariff area or a monetary union or a regional association for economic cooperation or a regional arrangement for specific projects: or

b). The adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time: or

c). Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article V. Compensation for Losses

1. 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, state of national emergency, revolt, insurrection or not in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement.

2. The treatment shall not be less favourable than that which the latter Contracting Party accords to investors of any third

State.

Article VI. Expropriation

1. Each Contracting Party shall not take any measures of expropriation, nationalization or any other dispossession, having effect equivalent to nationalization or expropriation against the investments of an investor of the other Contracting Party except under the following conditions:

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

(b) The measures are non discriminatory;

(c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the fair market value immediately before the measure of dispossession became public knowledge, and it shall be freely transferable in freely usable currencies from the Contracting Party.

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

Article VII. Free Transfer

1. Each Contracting Party shall, within the scope of its relevant laws and regulations, allow without delay the free transfer in freely usable currencies of payment in connection with investments and returns therefrom, in particular, but not exclusively, of:

(a) The capital and returns accruing from any investments of the investors of the other Contracting Party;

(b) The proceeds from the total or partial liquidation of any investments made by investors of the other Contracting Party;

(c) Funds in repayment of loans;

(d) The earnings of natural persons of the other Contracting Party who are employed and allowed to work in connection with an investment in its territory; and

(e) Payments of compensation under Articles V_ and VI_

2. The exchange rate applicable to such transfer shall be the market rate of exchange prevailing at the time of remittance.

3. Each Contracting Party shall undertake to accord to transfers referred to in paragraph 1 of this Article, a treatment no less favourable than that accorded to transfer originating from investments made by investors of any third State.

Article VIII. Subrogation

If the investments of an investor of the 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 investor pursuant to the terms of such insurance shall 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.

Article IX. Consultation and Amendment

1. Either Contracting Party may request that consultation be held on any matter concerning the implementation of 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 at any time, if deemed necessary, by mutual consent of both Contracting Parties.

Article X. Settlement of Disputes between Investor and the Contracting Party

1. Any dispute between a Contracting Party and an investor of the other Contracting Party, concerning an investment of the latter in the territory of the former, shall be settled amicably through consultations and negotiations.

2. If such a dispute cannot be settled within a period of three months from the date of a written notification either party

requested amicable settlement, the dispute shall, at the request of the investor concerned, be submitted either to the judicial procedures provided by the Contracting Party concerned or to international arbitration or conciliation.

3. In case that the dispute is submitted to arbitration or conciliation the investor shall be entitled to refer the dispute to:

a. The International Center for Settlement of Investment Disputes (ICSID) 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, D.C, on 18 March 1965 in case both Contracting Parties have become the parties to the Convention; or

b. An ad hoc tribunal to be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

Article XI. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through diplomatic channels.

2. If a dispute between the Contracting Parties cannot thus be settled within six months, it shall at the request of either Contracting Party, be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case as follows:

(a) Each Contracting Party shall appoint one member, and these two members shall then select a national of a third State who on approval by the Contracting Parties shall be appointed Chairman of the tribunal;

(b) The said members shall be appointed within three months, and the Chairman within four months, from the date on which either Contracting Party shall have informed the other Contracting Party that it proposes to submit the dispute to an arbitral tribunal.

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 relevant agreement, 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 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. (a) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both Parties.

(b) Subject to the power of the arbitral tribunal to give a different ruling concerning costs, the cost of its own member and of its representation in the arbitral proceedings shall be borne by each Contracting Party and the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

(c) In all respects other than those specified in subparagraphs (a) and (b) of this paragraph, the arbitral tribunal shall determine its own procedure.

Article XII. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the thirtieth day after the date of receipt of the latter notification by which the Contracting Parties have notified 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 (10) years and shall continue in force thereafter for 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 ten (10) years from the date of termination.

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

DONE at Jakarta on this 17th day of February 1998 in duplicate in the Indonesian, Thai and English languages, all texts being equally authentic. In case of any divergence, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND