KEPUTUSAN PRESIDEN REPUBLIK INDONESIA
NOMOR 110 TAHUN 1998
TENTANG
PENGESAHAN AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS ON THE PROMOTION AND PROTECTION OF INVESTMENTS
PRESIDEN REPUBLIK INDONESIA,

Menimbang :

a. bahwa di Port Louis, Mauritius pada tanggal 5 Maret 1997 Pemerintah Republik Indonesia telah menandatangani Pengesahan Agreement between the Government of the Republic of Indonesia and the Government of the Republic of Mauritius on the Promotion and Protection of Investments, sebagai hasil perundingan antara Delegasi-delegasi Pemerintah Republik Indonesia dan Pemerintah Republik Mauritius;
b. bahwa sehubungan dengan itu, dan sesuai dengan Amanat Presiden Republik Indonesia kepada Ketua Dewan Perwakilan Rakyat Nomor 2826/HK/1960 tanggal 22 Agustus 1960 tentang Pembuatan Perjanjian-perjanjian dengan Negara Lain, dipandang perlu untuk mengesahkan Agreement tersebut dengan Keputusan Presiden;

Mengingat:
Pasal 4 ayat (1) dan Pasal 11 Undang-Undang Dasar 1945;

MEMUTUSKAN:

Menetapkan:
KEPUTUSAN PRESIDEN TENTANG PENGESAHAN AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS ON THE PROMOTION AND PROTECTION OF INVESTMENTS.

Pasal 1

Mengesahkan Agreement between the Government of the Republic of Indonesia and the Government of the Republic of Mauritius on the Promotion and Protection of Investments, yang telah ditandatangani Pemerintah Republik Indonesia di Port Louis, Mauritius, pada tanggal 5 Maret 1997, sebagai basil perundingan antara Delegasi-delegasi Pemerintah Republik Indonesia dan Pemerintah Republik Mauritius yang salinan naskah aslinya dalam bahasa Inggeris sebagaimana terlampir pada Keputusan Presiden ini.

Pasal 2

Keputusan Presiden ini mulai berlaku pada tanggal ditetapkan.

Agar setiap orang mengetahuinya, memerintahkan pengundangan Keputusan Presiden ini dengan penempatannya dalam Lembaran Negara Republik Indonesia.

Ditetapkan di Jakarta
pada tanggal 27 Juli 1998
PRESIDEN REPUBLIK INDONESIA
Ttd
BACHARUDDIN JUSUF HABIBIE

Diundangkan di Jakarta
pada tanggal 27 Juli 1998
MENTERI NEGARA SEKRETARIS NEGARAREPUBLIK INDONESIA
Ttd
AKBAR TANDJUNG
LEMBARAN NEGARA REPUBLIK INDONESIA TAHUN 1998 NOMOR 121

CATATAN

AGREEMENTBETWEENTHE GOVERNMENT OF THE REPUBLIC OF INDONESIAANDTHE GOVERNMENT OF THE REPUBLIC OF MAURITIUSONTHE PROMOTION AND PROTECTIONOF INVESTMENTS

The Government of the Republic of Indonesia and the Government of the Republic of Mauritius (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 flow of investments made by investors of either Contracting Party in the territory of the other Contracting Party; and

RECOGNISING that the promotion and protection of investments will stimulate the development of business initiatives and will increase prosperity in the territories of both Contracting Parties;

Have agreed as follows:

ARTICLE I
DEFINITIONS

For the purpose of this Agreement,

1. "investment" means every kind of asset admissible under the relevant laws and regulations of the Contracting Party in whose territory the respective business undertaking is made, and in particular, though not exclusively, includes:
   a. movable and immovable property as well as other rights in ram such as mortgages, liens or pledges;
   b. shares, debentures and any other form of participation in a company;
   c. claims to money, or to any performance under contract having an economic value;

d. intellectual properly rights, in particular copyrights, patents, utility-model patents, industrial designs, trade-marks, trade names, technical processes, know-how, and goodwill;

e. economic value of concession rights or permits conferred in accordance with the law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any change in the form in which assets are or have been invested does not affect their character as investments.

2. "return" means the amount yielded by an investment and in particular, though not exclusively, profit, interest, capital gains, dividends, royalties and fees;

3. "investor" means a national of one Contracting Party who invests in the territory of the other Contracting Party;

4. "national" shall mean, with regard to either Contracting Party:
   a. natural person having the nationality of that Contracting Party;
   b. legal person incorporated or constituted under the law of that Contracting Party;

5. "territory" means
   a. in the case of the Republic of Indonesia:
   the territory of the Republic of Indonesia as defined in its laws.
   b. in the case of the Republic of Mauritius:
      (i) all the territories and islands which, in accordance with the laws of Mauritius, constitute the State of Mauritius;
      (ii) the territorial sea of Mauritius; and
      (iii) any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius, as an area, including the Continental Shelf, within which the rights of Mauritius with respect to the sea, the sea-bed and sub-soil and their natural resources may be exercised.

ARTICLE II
SCOPE OF THE AGREEMENT

1. This Agreement shall only apply:
   a. in respect of investments in the territory of the Republic of Indonesia to all investments made by investors of the Republic of Mauritius which have been granted admission in accordance with the Law No. 1 of 1967 concerning foreign investment and any law amending or replacing it.
   b. in respect of the investments in the territory of Mauritius, to an 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 Mauritius and upon such conditions, if any, as it shall deem fit.

2. The provision of the foregoing paragraph shall also apply to all investments made by investors of the other Contracting Party in the territory of the other Contracting Party made before the coming into force of the Agreement, but it shall not apply

to any dispute which arose before its entry into force of the Agreement and which has already been referred to a court of law, an arbitration tribunal or any other body for the settlement of the dispute.

3. The provisions of this Agreement shall not in any way limit the right of either Contracting Party to apply prohibitions or restrictions of any kind or take any other action which is directed to the protection of its essential security interests, or to the protection of public health or the prevention of diseases and pests in animals or plants.

ARTICLE III
PROMOTION AND PROTECTION OF INVESTMENTS

1. Each Contracting Party shall encourage and create favourable conditions for the making of investments in its territory by investors of the other Contracting Party, and subject to compliance with the provisions of its laws, shall admit such investments.
2. Each Contracting Party shall endeavour to grant the necessary permits relating to these investments and shall allow, within the framework of its laws, the execution of contracts related to manufacturing licenses and technical, commercial, financial and administrative assistance.
3. Investments approved under Article II shall be accorded fair and equitable protection in accordance wit this Agreement.

ARTICLE IV
MOST-FAVOURED-NATION PROVISIONS

1. Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regard their management, use, enjoyment or disposal of investments or returns, to treatment less favourable than that which it accords to investors of any third state.
2. Investments of investors of one Contracting Party in the territory of the other Contracting Party and also returns there from shall receive treatment which is fair and equitable and not less favourable than that accorded in respect of the investments of the investors of any third state.
3. The provisions of paragraph 2 shall not be construed so as to oblige either Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:
    a. any custom union, free trade area, common market or any similar international agreement or interim arrangement leading up to such custom union, free trade area, or common market of which either of the Contracting Parties is a member;
    b. any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation;
    c. special advantages to foreign development finance institutions operating in the territory of either Contracting Party for the exclusive purpose of development assistance through mainly nonprofit activities.

ARTICLE V
COMPENSATION FOR LOSSES

Investors of either Contracting Party whose investment in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolutions, a state of national emergency, revolt, insurrection or riot 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, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

ARTICLE VI
EXPROPRIATION

1. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to measures having effects equivalent to nationalization or expropriation except for .public purposes, under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall be made without delay, be effectively realizable and shall be determined on the fair market value as mutually agreed upon between the parties.
2. The investor affected by the expropriation shall have a fight, under the law of the expropriating Contracting Party to prompt review, by a court of law of that Contracting Party of the expropriation case and the evaluation of compensation for the expropriation.
3. Where a Contracting Party expropriates, nationalizes or lakes measures having effect equivalent to nationalization or expropriation against the assets of a company which is incorporated or constituted under the law in force in any part of its territory, and in which investors of the other Contracting Party own shares, it shall as far as possible ensure that the provision of paragraphs 1 and 2 of this Article are applied to the extent necessary to guarantee the compensation provided for in those paragraphs to the owners of these shares.

ARTICLE VII
TRANSFER OF INVESTMENT AND RETURNS

1. Each Contracting Party shall, in accordance with its relevant laws, allow investors of the other Contracting Party the free transfer of funds relating to their investment and return, including compensation paid pursuant to the provisions of Articles V and VI of this Agreement.
2. All transfer shall be effected without delay in any convertible currency at the market rate of exchange applicable on the date of transfer.

ARTICLE VIII
SUBROGATION

1. If a Contracting Party or its designated agency makes a payment to its own investor under a guarantee it has given in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment to the former Contracting Party of all the rights and claims of the indemnified investor, and shall also recognize that the former Contracting Party or its designated agency is entitled to exercise such fights and enforced such claims by virtue of subrogation to the same extent as the original investor.
2. In the case of the subrogation as defined in paragraph 1 above, the investor shall not pursue a claim unless authorized to do so by the Contracting Party or its designated Agency.

ARTICLE IX
SETTLEMENT OF DISPUTES BETWEEN AN INVESTORAND A CONTRACTING PARTY

1. Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall be settled amicably.
2. In the event that such a dispute cannot be settled within six months, either party to the dispute may, in accordance with the law and regulations of the Contracting Party in whose territory the investment was made, submit the dispute to the competent court of that Contracting Party.
3. If any dispute cannot be settled as specified in paragraph I of this Article within six months, it may be submitted to an ad hoc arbitral tribunal. The provisions of this paragraph shall not apply if the investor concerned has resorted to the procedures specified in paragraph 2 of this Article.
4. The ad hoc arbitral tribunal shall be constituted for each individual case in the following manner: Each party to the dispute shall appoint an arbitrator, and these two arbitrators shall appoint as Chairman a national of a third state which has diplomatic relations with both Contracting Parties. The first two arbitrators shall be appointed within two months, and the Chairman within four *33819 months, of the date on which one party concerned notifies the other party of its submission of the dispute to arbitration.
5. If the tribunal has not been constituted within the period specified in paragraph 4, either party to the dispute may, in the absence of any other agreement, request the Secretary General of the International Center for Settlement of Investment Disputes to make the necessary appointment.
6. The tribunal shall determine its own procedures with reference to the provisions of the Convention on the Settlement of Investment Disputes, done at Washington, D.C. on 18 March 1965.
7. The tribunal shall adjudicate in accordance with the laws of the Contracting Party to the dispute, the provisions of this Agreement as well as generally recognized principles of international law accepted by both Contracting Parties.
8. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both parties to the dispute. The arbitral tribunal shall slate the

basis of its decision and state reasons upon the request of either party. Each Party undertakes to execute the decisions in accordance with its law.

9. Each party to the dispute shall bear the cost of its appointed member of the tribunal and of its representation in the proceedings. The cost of the appointed Chairman and the remaining cost in the arbitral proceedings shall be borne in equal parts by the parties to the dispute.

ARTICLE X
SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled amicably through diplomatic channels.
2. If the dispute cannot be settled within a period of six months following the date on which such negotiations were requested by either Contracting Party, it may upon the request of either Contracting Party, be submitted to an arbitral tribunal.
3. Such an arbitral tribunal shall be constituted for each individual case in the following manner; within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator for the tribunal. Those two arbitrators shall then select a national of a third State who, upon approval by the two Contracting Parties, shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the dale of appointment of the other two arbitrators.
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 *33820 function, the member of the International Court of Justices next in seniority who is not a national of either Contracting Party and not prevented from discharging such functions shall be invited to make the necessary appointments.
5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own arbitrator to the tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne equally by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of cost shall be home by one of the two Contracting Parties and this award shall be binding on, and executed by, both Contracting Parties.
6. Apart from the above, the tribunal shall determine its own procedure.

ARTICLE XI
APPLICATION OF OTHER RULES

If the provisions of the law of either Contracting Party or obligations under international law existing at present or established after between the Contracting Parties, in addition to this Agreement, contain rules, whether general or specific, entitling investments and returns of investors of the other Contracting Party to treatment more favourable than that provided for by the present Agreement, such rules shall, to the extent that they are more favourable, prevail over this Agreement.

ARTICLE XII
CONSULTATION AND AMENDMENT

Either Contracting Party may request that consultations be held on any matter concerning this Agreement, including its amendment by mutual consent. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

ARTICLE XIII
ENTRY INTO FORCE DURATION AND TERMINATION

1. The present Agreement shall enter into force on the day following the date of receipt of last notification by either Contracting Party of the accomplishment of its internal procedures required for entry into force of this Agreement. It shall remain in force for a period of ten years and shall continue in force thereafter for another period of ten years and so forth unless denounced in writing by either Contracting Party twelve months before its expiration.
2. In respect of investments made before the date of termination of this Agreement becomes effective, the provisions of Articles I to XII shall remain in force for a further period of ten 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 Port Louis on the fifth of March 1997 in duplicate in the English language.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
signed
Ali Alatas
Minister Foreign Affairs
FOR THE GOVERNMENT OFTHE REPUBLIC OF MAURITIUS
signed
Dr Vasant Bunca
Minister of Finance