

No. 17544

**SWITZERLAND
and
INDONESIA**

Agreement concerning the encouragement and the reciprocal protection of investments (with protocol). Signed at Jakarta on 6 February 1974

Authentic texts: French and English.

Registered by Switzerland on 15 February 1979.

**SUISSE
et
INDONÉSIE**

Convention concernant l'encouragement et la protection réciproque des investissements (avec protocole). Signée à Jakarta le 6 février 1974

Textes authentiques : français et anglais.

Enregistrée par la Suisse le 15 février 1979.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE SWISS CONFEDERATION AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA CONCERNING THE ENCOURAGEMENT AND THE RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Swiss Confederation and the Government of the Republic of Indonesia,

Desirous of strengthening the economic co-operation between both States,

Intending to create favourable conditions for capital investments in both States and to intensify the co-operation between private companies of both States in the field of economic productivity and technical sciences,

Recognizing the need for protection of investments of nationals and companies of both States in order to stimulate the flow of capital to either State with a view to the economic prosperity of their Peoples and Countries,

Have agreed as follows:

Article 1. Each Contracting Party shall in its territory encourage investments by nationals or companies of the other Contracting Party and shall admit such investments in accordance with its prevailing laws and regulations.

Article 2. Each Contracting Party shall protect within its territory the investments made in accordance with its laws and regulations by nationals or companies of the other Contracting Party.

Article 3. For the purpose of this Agreement:

a) The term “nationals” shall mean physical persons who, according to the law of each Contracting Party, are considered as citizens of that State.

b) The term “companies” shall mean:

1. With respect to the Swiss Confederation, companies, institutions or foundations with legal personality, as well as partnership firms or limited partnerships and other associations without legal personality incorporated under Swiss law or in which Swiss nationals have directly or indirectly a substantial interest;
2. With respect to the Republic of Indonesia, any company with a limited liability incorporated in the territory of the Republic of Indonesia, or any juridical persons lawfully constituted in accordance with its legislation.

c) The term “investment” shall comprise every kind of asset and more particularly, though not exclusively:

1. Movable and immovable property as well as any other rights in rem, such as mortgage, lien, pledge, usufruct and similar rights;
2. Shares or other kinds of interest in companies;
3. Claims to money or to any performance having an economic value;
4. Copyrights, industrial property rights, technical processes, know-how, trademarks, trade-names and goodwill; and

¹ Applied provisionally from 6 February 1974, the date of signature, and came into force definitively on 9 April 1976, the date of the exchange of diplomatic notes by which the Contracting Parties notified each other that their constitutional requirements had been fulfilled in accordance with article 10 (1).

5. Business concessions under public law, including concessions regarding the prospecting for, or the extraction or exploitation of natural resources.

d) The term “returns” shall mean the amounts yielded by an investment as net profit or interest for a specific period.

Article 4. (1) Each Contracting Party shall ensure fair and equitable treatment within its territory to the investments, goods, rights and interests of nationals or companies of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension and the eventual liquidation of such investments and other valuables.

(2) Each Contracting Party shall grant the necessary permits to the extent that an admission procedure is required for making investments by nationals or companies of one Contracting Party in the territory of the other Contracting Party. Permits shall likewise be granted in the event such are required by the legislation or rules and regulations of either Contracting Party for the carrying out of contracts of license or of technical assistance, both commercial and administrative, as well as for activities of consultants and other qualified persons of foreign nationality, provided that such contracts are concluded or such activities are performed within the scope of approved investments as covered by this Agreement.

(3) Except to the stipulations contained in the annexed protocol, the treatment accorded by each Contracting Party within its territory to the investments of the nationals or companies of the other Contracting Party shall be at least equal to that granted by the Party to its own nationals or companies or to the treatment granted to nationals or companies of the most favoured nation, if the latter is more favourable.

Article 5. (1) To nationals or companies of one Contracting Party having made investments in the territory of the other Contracting Party shall be granted the right of free transfer.

(2) The technical or administrative modalities of such transfer are subject to the legislation or rules and regulations in the territory in which the investment has been made.

(3) The free transfer shall be granted for:

- a) Net profits, dividends, interests and other current returns accruing from investment activities;
- b) Amortisations and depreciation of capital and contractual repayments;
- c) The proceeds of partial or total liquidation of such approved investments, including possible increment value;
- d) Expenses relating to foreign personnel and management;
- e) Royalties, license fees and other payments for technical and management assistance by foreign personnel; and
- f) Approved additional contributions of capital necessary for the maintenance or development of the investment.

Article 6. (1) Neither of the Contracting Parties shall take measures of expropriation, nationalization or dispossession, either direct or indirect, against the investments, goods, rights or interests of nationals or companies of the other Contracting Party, unless the measures are taken in the public interest and under due process of law, and that provisions shall be made for effective and adequate compensation.

(2) The amount of compensation, which shall have been fixed at the time of expropriation, nationalization or dispossession, shall be settled in the currency in which the approved investment has been made.

(3) The compensation shall be paid without undue delay to the national or company entitled thereto.

Article 7. (1) The present Agreement shall also apply to investments in the territory of a Contracting Party made in accordance with its legislation by nationals or companies of the other Contracting Party prior to the entry into force of this Agreement but not before the 10th of January, 1967, date of the entry into force of the Indonesian Foreign Capital Investment Law, Law No. 1 of 1967.

(2) The rights of both of the Contracting Parties with respect to investments made prior to the 10th of January, 1967, shall in no way be affected by the provisions of the present Agreement.

Article 8. Provisions more favourable than those of the present Agreement which have been agreed upon by either Contracting Party with nationals or companies of the other Contracting Party shall not be affected by the present Agreement.

Article 9. (1) Disputes concerning the interpretation or implementation of the present Agreement shall be settled by means of diplomatic negotiations between the Governments of both Contracting Parties.

(2) If both Contracting Parties are unable to reach an agreement, the dispute shall, upon request of either Contracting Party, be submitted to an arbitral tribunal composed of three members. Each Contracting Party shall appoint one arbitrator and these two arbitrators shall nominate a third arbitrator as chairman who shall be a national of a third State.

(3) If either Contracting Party has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make such appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

(4) If the two arbitrators are unable to reach an agreement on the choice of the third arbitrator within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

(5) If, in the cases specified under paragraphs 3 and 4 of this article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the next senior Judge of the Court who is not a national of either Contracting Party.

(6) Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.

(7) The tribunal shall reach its decision by a majority of votes and such decision shall be final and binding on both Contracting Parties.

Article 10. (1) The present Agreement shall enter into force on the day the two Contracting Parties notify each other by diplomatic notes that their constitu-

tional requirements for the entering into force of this Agreement have been fulfilled, and shall remain binding for a period of ten years.

(2) Unless either of the Contracting Parties shall have given notice of termination six months before the expiry of the current period, the validity of the present Agreement shall be deemed to have been tacitly extended for a further period of each time five years.

Article 11. In case of termination of the present Agreement, the provisions thereof shall continue to be effective for the approved period of validity of investments admitted by the Contracting Party prior to the notification of termination of the present Agreement.

Article 12. The Contracting Parties will apply provisionally the present Agreement as from the date of its signature.

IN WITNESS WHEREOF, the undersigned Representatives, duly authorized thereto, have signed the present Agreement.

DONE at Jakarta, this 6th day of February, 1974, in four originals, two in English and two in French, each text being equally authoritative, but in case of divergence the English text shall prevail.

For the Government
of the Swiss Confederation:

[Signed — Signé]¹

For the Government
of the Republic of Indonesia:

[Signed — Signé]²

PROTOCOL

At the time of signing the Agreement concerning the Encouragement and the Reciprocal Protection of Investments concluded between the Swiss Confederation and the Republic of Indonesia, the undersigned Plenipotentiaries have, in addition, agreed on the following provisions which shall be regarded as an integral part of the said Agreement:

1. Notwithstanding the provisions of article 4, paragraph 3 of the present Agreement, it is understood by both of the Contracting Parties that the application of restrictive legislations concerning the acquisition of landed property by aliens is not contrary to the provisions of the present Agreement.
2. In derogation of the national treatment provided for in article 4, paragraph 3, of the present agreement, the government of the Republic of Indonesia in view of the present stage of development of the Indonesian national economy reserves its position with regard to national treatment of Swiss investments in the territory of the Republic of Indonesia as follows:

Certain provisions such as article 4, 6 and 14 of the Domestic Investment Law (Law No. 6 of 1968) as amended by Law No. 12 of 1970 still contain additional advantages to Indonesian domestic investments as compared to foreign investments in Indonesia under the Foreign Investment Law (Law No. 1 of 1967) as

¹ Signed by Max Feller — Signé par Max Feller.

² Signed by Adam Malik — Signé par Adam Malik.

amended by Law No. 11 of 1970. When, pursuant to present or subsequent legislation the Indonesian Government extends additional advantages to Indonesian investors, the Indonesian Government shall, in order to ensure fair and equitable treatment, grant identical or compensating facilities to investments by companies and nationals of the Swiss Confederation in similar economic activities.

Equivalent treatment may be applied in the Swiss Confederation to investments by nationals or companies of the Republic of Indonesia.

DONE at Jakarta, this 6th day of February, 1974, in four originals, two in English and two in French, each text being equally authoritative, but in case of divergence the English text shall prevail.

For the Government
of the Swiss Confederation:

[Signed — Signé]¹

For the Government
of the Republic of Indonesia:

[Signed — Signé]²

¹ Signed by Max Feller — Signé par Max Feller.

² Signed by Adam Malik — Signé par Adam Malik.