

No. 45631 *

**Finland
and
Indonesia**

Agreement between the Government of the Republic of Finland and the Government of the Republic of Indonesia on the promotion and protection of investments. Helsinki, 12 September 2006

Entry into force: *2 August 2008 by notification, in accordance with article 16*

Authentic texts: *English*

Registration with the Secretariat of the United Nations: *Finland, 7 January 2009*

**Finlande
et
Indonésie**

Accord entre le Gouvernement de la République de Finlande et le Gouvernement de la République d'Indonésie relatif à la promotion et à la protection des investissements. Helsinki, 12 septembre 2006

Entrée en vigueur : *2 août 2008 par notification, conformément à l'article 16*

Textes authentiques : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *Finlande, 7 janvier 2009*

* *The text reproduced below is the original text of the agreement as submitted. For ease of reference, it was sequentially paginated. The final UNTS version of it is not yet available.
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La version finale RTNU n'est pas encore disponible.*

[ENGLISH TEXT – TEXTE ANGLAIS]

**Agreement between
the Government of the Republic of Finland
and
the Government of the Republic of Indonesia
on the Promotion and the Protection of Investments**

**Agreement between
the Government of the Republic of Finland
and
the Government of the Republic of Indonesia
on the Promotion and the Protection of Investments**

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

RECOGNISING the need to protect investments of the investors of one Contracting Party in the territory of the other Contracting Party on a non-discriminatory basis;

DESIRING to promote greater economic cooperation between them, with respect to investments by investors of one Contracting Party in the territory of the other Contracting Party;

RECOGNISING that agreement on the treatment to be accorded to such investments will stimulate the flow of private capital between the Contracting Parties;

AGREEING that a stable framework for investment will contribute to increasing the effective utilization of economic resources;

RECOGNISING that economic and business ties can promote sustainable development;

RECOGNIZING, that pursuant to the prevailing laws and regulations of the Contracting Parties and taking into account the provisions of this Agreement, both Parties resolve to conclude an agreement concerning the promotion and protection of investments and:

HAVE AGREED ON THE FOLLOWING:

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ARTICLE 1
DEFINITIONS

For the purpose of the agreement:

1. The term of "investment" means every kind of asset established or acquired by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party, including in particular, not exclusively:
 - a. Moveable and immovable property or any property rights such as mortgages, liens, pledges, leases and similar rights;
 - b. Reinvested returns;
 - c. Shares and stocks in and debentures of a company or any other forms of participation in a company;
 - d. Claims to money or rights to a performance having a financial value;
 - e. Intellectual property rights including but not limited to patents, copyrights, trade marks, geographical indications, industrial designs, layout design of integrated circuits, trade secrets, and rights in plants varieties, as well as business names, technical processes, know-how and good will;
 - f. Concessions conferred by law, by an administrative act or under a contract by a competent authority, including concession to search for, develop, extract or exploit natural resources.

Investments made in the territory of one Contracting Party by any legal entity of that same Contracting Party, but actually owned by investors of the other Contracting Party, shall likewise be considered as investments of investors of the latter Contracting Party if they have been made in accordance with the laws and regulations of the former Contracting Party.

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

2. The term “returns” means the amounts yielded from investments and shall in particular, though not exclusively include profits, dividends, interests, royalties, capital gains or any payments in kind related to an investment.
3. The term “investor” means:
 - a. in respect of the Republic of Finland
 - i. Any natural person who is a national of the Republic of Finland in accordance with its laws; or
 - ii. Any legal entity such as company, corporation, firm, partnership, business association, institution or organization, incorporated or constituted in accordance with the laws and regulations of the Republic of Finland and having its registered office or central administration or principal place of business within the jurisdiction of the Republic of Finland, and whether or not for profit and whether its liabilities are limited or not.
 - b. in respect of the Republic of Indonesia
 - i. Any natural person having the nationality of the Republic of Indonesia
 - ii. Any legal person constituted under the law of the Republic of Indonesia
4. The term “territory” means:
 - a. With respect to the Republic of Finland, the land territory, internal waters and territorial sea of the Contracting Party and the airspace above them, as well as the maritime zones beyond the territorial sea, including the seabed and subsoil, over which that Contracting Party exercises sovereign rights or jurisdiction in accordance with its national laws in force and international law.
 - b. With respect to the Republic of Indonesia, its territory as defined in its laws including part of the continental shelf and adjacent seas over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea of 1982.

ARTICLE 2
PROMOTION AND PROTECTION OF INVESTMENTS

1. Each Contracting Party shall promote in its territory investments by investors of the other Contracting Party and shall, in accordance with its laws and regulations, admit such investments.
2. Each Contracting Party shall in its territory accord to investments and returns of investments of investors of the other Contracting Party fair and equitable treatment and full protection and security.
3. Neither Contracting Party shall in its territory impair by unreasonable or arbitrary measures the acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposal of investments of investors of the other Contracting Party.
4. Each Contracting Party is fully responsible under this Agreement for the observance of the provisions of the Agreement, and shall take measures available to it to ensure such observance by all authorities within its territory.

ARTICLE 3
TREATMENT OF INVESTMENTS

1. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments once admitted, a treatment no less favourable than the treatment it accords to its own investors and their investments with respect to the acquisition, expansion, operation, management, maintenance, use and sale or other disposal of investments.
2. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments, a treatment no less favourable than the treatment it accords to investors of the most favoured nation and to their investments with respect to the establishment, acquisition, expansion, operation, management, maintenance, use and sale or other disposal of investments.

3. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments the better of the treatments required by paragraph 1 and paragraph 2 of this Article, whichever is more favourable to the investors or investments, according to the investors.
4. Neither Contracting Party shall mandate or enforce in its territory measures on investments by investors of the other Contracting Party, concerning purchase of materials, means of production, operation, transport, marketing of its products or similar orders having discriminatory effects.

ARTICLE 4 EXCEPTIONS

The provisions of this Agreement shall not be understood so as to oblige one Contracting Party to extend to the investors and investments by investors of the other Contracting Party the benefit of a treatment, preference or privilege by virtue of an existing or future:

- a. Free trade area, customs union, common market, economic and monetary union or other similar regional economic integration agreement, including regional labour market agreements, to which one of the Contracting Parties is or may become a party, or
- b. Agreement for the avoidance of double taxation or agreement with other countries relating wholly or mainly to taxation, or
- c. Multilateral agreement relating wholly or mainly to investments.

ARTICLE 5 EXPROPRIATION

1. Investments by investors of a Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalized or subjected to any other measures, having an effect equivalent to expropriation or nationalization (hereinafter referred to as "expropriation"), except for a purpose which is in the public interest, on a non-discriminatory basis, in accordance with due process of law, and against prompt, adequate and effective compensation.

2. Such compensation shall amount to the value of the expropriated investment at the time immediately before the expropriation or before the impending expropriation became public knowledge whichever is the earlier. The value shall be determined in accordance with generally accepted principles of valuation, taking into account, inter alia, the capital invested, replacement value, appreciation, and current returns.
3. Compensation shall be fully realisable and shall be paid without any restriction or delay in a freely convertible currency. It shall include interest at a commercial rate established on a market basis for the currency of payment from the date of dispossession of the expropriated property until the date of actual payment.
4. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph 1 of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investments to such investors of the contracting party who are owners of those shares.
5. Without prejudice to the provisions of Article 9 of this Agreement, the investor whose investments are expropriated shall have the right to prompt review of its case and of valuation of its investments in accordance with the principles set out in this Article, by a judicial or other competent authority of that Contracting Party.

ARTICLE 6 COMPENSATION FOR LOSSES

1. Investors of a Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, 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, as regards restitution, indemnification, compensation or other settlement, a treatment no less favourable than the one accorded by the latter Contracting Party to its own investors or investors of the most favoured nation, whichever, according to the investor, is the more favourable.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:
 - a. requisitioning of its investment or a part thereof by the latter's authorities, or
 - b. destruction of its investment or a part thereof by the latter's authorities, which was not required by the necessity of the situation,

shall be accorded by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective and with respect to compensation, shall be in accordance with Article 5 paragraph 2-3 from the date of requisitioning or destruction until the date of actual payment.

ARTICLE 7 FREE TRANSFER

1. Each Contracting Party shall ensure to investors of the other Contracting Party the free transfer, into and out of its territory, of their investments and transfer payments related to investments. Such payments shall include in particular, though not exclusively:
 - a. principal and additional amounts to maintain, develop or increase the investment;
 - b. returns;
 - c. proceeds obtained from the total or partial sale or disposal of an investment, including the sale of shares;
 - d. amounts required for the payment of expenses which arise from the operation of the investment, such as loans repayments, payment of royalties, management fees, license fees or other similar expenses;
 - e. compensation payable pursuant to Article 5, 6, 8 and 9;
 - f. earnings and other remuneration of personnel engaged from abroad and working in connection with an investment.

2. Each Contracting Party shall further ensure that the transfers referred to in paragraph 1 of this Article shall be made without any restriction or delay in a freely convertible currency of the choice of the investor and at the prevailing market rate of exchange applicable on the date of transfer to the currency to be transferred and shall be immediately transferable.
3. Transfer payments shall be deemed to have been made without delay if effected within such period as is normally required for the completion of transfer formalities.
4. In the absence of a market for foreign exchange, the rate to be used shall be the most recent exchange rate for the conversions of currencies into Special Drawing Rights.
5. In case of a delay in transfer caused by the host Contracting Party, the transfer shall also include interest at a commercial rate established on a market basis for the currency in question from the date on which the transfer was requested until the date of actual transfer and shall be borne by that Contracting Party.

ARTICLE 8 SUBROGATION

1. If the investments of an investor of one Contracting Party are insured against non-commercial risks, 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.
2. The Contracting Party exercising subrogation shall disclose the coverage of the claims arrangements with its investors to the other Contracting Party.

ARTICLE 9

SETTLEMENT OF DISPUTES BETWEEN AN INVESTOR AND A
CONTRACTING PARTY

1. Any dispute arising directly from an investment between one Contracting Party and an investor of the other Contracting Party should be settled amicably between the two parties to the dispute, through consultations and negotiations.
2. If such a dispute cannot be settled in this way, the dispute shall at the request of the investor concerned be submitted to:
 - a. the competent courts of the Contracting Party in whose territory the investment is made; or
 - b. arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established pursuant to the Convention of the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965 (hereinafter referred to as the "Centre"), if the Centre is available; or
 - c. an ad hoc arbitration tribunal to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or
 - d. any other previously accepted ad hoc arbitration tribunal.
3. Once the investor has submitted the dispute to the competent court of the host Contracting Party or to one of the arbitration procedures stipulated in paragraphs 2(b) to 2(d) of this Article, the choice of the procedure is final.
4. Any arbitration under this Article shall, at the request of either party to the dispute, be held in a state that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), opened for signature at New York on 10 June 1958. Claims submitted to arbitration under this Article shall be considered to arise out of a commercial relationship or transaction for the purposes of Article 1 of the New York Convention.

5. Each Contracting Party hereby gives its unconditional consent to the submission of a dispute between it and an investor of the other Contracting Party to arbitration in accordance with this Article.
6. Neither of the Contracting Parties, which is a party to a dispute, can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitral award, on account of the fact that the investor, which is the other party to the dispute, has received an indemnification covering a part or the whole of its losses by virtue of an insurance.
7. The award shall be final and binding on the parties to the dispute and shall be executed in accordance with national law of the Contracting Party in whose territory the award is relied upon, by the competent authorities of the Contracting Party by the date indicated in the award.

ARTICLE 10
SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING
PARTIES

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall, as far as possible, be settled through diplomatic channels.
2. If the dispute cannot thus be settled within six (6) months following the date on which either Contracting Party requested such negotiations, 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 in the following way. Within two (2) 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 four (4) months from the date of appointment of the other two members.
4. If the necessary appointments have not been made within the periods specified in paragraph 3 of this Article, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the

necessary appointment. If the President is a national of either Contracting Party or is otherwise 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 or is not otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.

5. The Arbitral Tribunal shall reach its decision by a majority of votes. The decisions of the Tribunal shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member appointed by that Contracting Party and of its representation in the arbitral proceedings. Both Contracting Parties shall assume an equal share of the costs of the Chairman, as well as any other costs. The Tribunal may make a different decision regarding the sharing of the costs. In all other respects, the Arbitral Tribunal shall determine its own rules of procedure.
6. Issues subject to dispute referred to in paragraph 1 of this Article shall be decided in accordance with the provisions of this Agreement and the applicable principles of international law.

ARTICLE 11 PERMITS

1. Each Contracting Party shall, subject to its laws and regulations, treat favourably the applications relating to investments and grant expeditiously the necessary permits required in its territory in connection with investments by investors of the other Contracting Party.
2. Each Contracting Party shall, subject to its laws and regulations, grant temporary entry and stay and provide any necessary confirming documentation to natural persons who are employed from abroad as executives, managers, specialists or technical personnel in connection with an investment by an investor of the other Contracting Party, and who are essential for the enterprise, as long as these persons continue to meet the requirements of this paragraph. Immediate family members of such personnel shall also be granted a similar treatment with regard to entry and temporary stay in the territory of the host Contracting Party.

ARTICLE 12
APPLICATION OF OTHER PROVISIONS

1. If the provisions of 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 made by investors of the other contracting Party to a treatment more favourable than is provided by this Agreement, such provisions shall, to the extent that they are more favourable to the investor, prevail over this Agreement.
2. Each Contracting Party shall observe any other obligation it may have with regard to a specific investment of an investor of the other Contracting Party.

ARTICLE 13
APPLICATION OF THE AGREEMENT

This Agreement shall apply to all investments made by investors of either contracting party in the territory of the other Contracting Party, whether made before or after the entry into force of this Agreement, but shall not apply to any dispute concerning an investment that arose or any claim that was settled before its entry into force.

ARTICLE 14
TRANSPARENCY

1. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures and administrative ruling and judicial decisions of general application as well as international agreements which may affect the investments of investors of the other Contracting Party in the territory of the former Contracting Party.
2. Nothing in this Agreement shall require a Contracting Party to furnish or allow access to any confidential or proprietary information, including information concerning particular investors or investments, the disclosure of which would impede law enforcement or be contrary to its laws protecting confidentiality or prejudice legitimate commercial interests of particular investors.

ARTICLE 15
CONSULTATIONS AND AMENDMENTS

1. The Contracting Parties shall, at the request of either Contracting Party, hold consultations for the purpose of reviewing the implementation of this Agreement and studying any issue that may arise from this Agreement. Such consultations shall be held between the competent authorities of the Contracting Parties in a place and at a time agreed on through diplomatic channels.
2. This Agreement may be amended at any time, if deemed necessary, by mutual consent of both Contracting Parties and through the same procedure as the original Agreement.

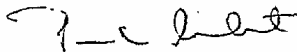
ARTICLE 16
ENTRY INTO FORCE, DURATION AND TERMINATION

1. The Agreement shall enter into force on the thirtieth day following the date of receipt of the last notification on which the Contracting Parties notify each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled.
2. Upon its entry into force, this Agreement substitutes and replaces the Agreement between the Government of the Republic of Finland and the Government of the Republic of Indonesia on the Promotion and Protection of Investments done on the 13th day of March 1996.
3. This Agreement shall remain in force for a period of fifteen (15) years and shall thereafter remain in force on the same terms until either Contracting Party notifies the other in writing of its intention to terminate the Agreement in twelve (12) months.
4. In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 15 shall remain in force for a further period of fifteen (15) years from the date of termination of this Agreement.

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

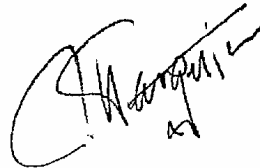
Done in duplicate at Helsinki on ¹²..... September 2006 in the English language.

For the Government of
the Republic of Finland



PAULA LEHTOMÄKI
Minister for Foreign Trade and
Development

For the Government of
the Republic of Indonesia



MARI ELKA PANGESTU
Minister of Trade

This is a true and complete copy of the Agreement between the Government of the Republic of Finland and the Government of the Republic of Indonesia on the Promotion and the Protection of Investments, done at Helsinki on 12 September 2006.

The Agreement was concluded in duplicate in the English language and it includes all the reservations made by the Parties thereto. The Agreement was signed for the Government of the Republic of Finland by Ms Paula Lehtomäki and for the Government of the Republic of Indonesia by Ms Mari Elka Pangestu.

The Agreement entered into force on 2 August 2008 after exchange of notifications confirming that the constitutional requirements for the entry into force of the Agreement have been fulfilled in accordance with Article 16 of the Agreement. The exchange of notifications took place on 3 July 2008.

At the Ministry for Foreign Affairs in Helsinki on 29 October 2008.



Päivi Kaukoranta
Director
Legal Department,
Unit for EU and Treaty Law