

Initiating letter – Australia

[Letterhead – Australian Ambassador Jakarta]

5 February 2020

H.E. Desra Percaya
Director General of Asia-Pacific and African Affairs
Ministry of Foreign Affairs
REPUBLIC OF INDONESIA

Your Excellency

In connection with the Indonesia-Australia Comprehensive Economic Partnership Agreement, done at Jakarta on 4 March 2019 (the “IA-CEPA”), the *Agreement between the Government of Australia and the Government of the Republic of Indonesia concerning the Promotion and Protection of Investments*, done at Jakarta on 17 November 1992, including the Exchange of Letters dated 17 November 1992 (the “IPPA”), and to recent discussions between the Government of Australia and the Government of the Republic of Indonesia concerning Investor-State Dispute Settlement under the IPPA and the IA-CEPA, I have the honour to confirm the following agreement reached between the Government of Australia and the Government of the Republic of Indonesia (“the Parties”):

The Parties agree to terminate the IPPA on the following conditions:

- (a) The IPPA shall be terminated upon entry into force of the IA-CEPA and entry into force of this agreement, and the “date of termination” of the IPPA shall be the date upon which both requirements have been fulfilled;
- (b) From the date of termination, all provisions of the IPPA, including the provisions contained in paragraphs 1 and 2 of Article XV (Entry into force, duration and termination), and any rights or obligations arising from those provisions, shall cease to have legal effect and the Parties to the IPPA shall be released from any obligation further to perform the IPPA;
- (c) Notwithstanding paragraph (a) above, the termination of the IPPA shall not in any way affect any disputes that have been submitted under Article XI (Settlement of disputes between a Party and an investor of the other Party) or Article XII (Settlement of disputes between the Parties concerning the interpretation and application of the Agreement) of the IPPA prior to the date of termination. For the purposes of this paragraph, a dispute shall be considered to have been submitted under the IPPA when:

- i. with respect to a dispute under Article XI of the IPPA, an investor of a Party to the IPPA submits the dispute for settlement in accordance with the provisions of Article XI.2 or XI.3; and
 - ii. with respect to a dispute under Article XII of the IPPA, a Party to the IPPA makes a written request to submit a dispute to an arbitral tribunal under Article XII.2 of the IPPA.
- (d) The Parties agree that provisions for termination of the IPPA contained in this letter constitute an amendment to paragraphs 1 and 2 of Article XV (Entry into force, duration and termination) of the IPPA and shall be effective to terminate the IPPA.

I have the honour to propose that, if the foregoing is acceptable to the Government of the Republic of Indonesia, this letter and your letter of confirmation in reply, shall together constitute an agreement between Australia and Indonesia. This agreement shall enter into force on the date on which the IA-CEPA has entered into force and the Parties have notified each other by an exchange of notes that they have completed their respective domestic processes to bring this agreement into force.

Yours sincerely

Gary Quinlan AO

Response letter – Republic of Indonesia

[Letterhead – Ministry of Foreign Affairs Republic of Indonesia]

Jakarta, 6 February 2020

H.E. Gary Quinlan AO
Australian Ambassador to Indonesia

Excellency

I have the honour to refer to your letter dated XX, which stated as follows:

“In connection with the Indonesia-Australia Comprehensive Economic Partnership Agreement, done at Jakarta on 4 March 2019 (the “IA-CEPA”), the *Agreement between the Government of Australia and the Government of the Republic of Indonesia concerning the Promotion and Protection of Investments*, done at Jakarta on 17 November 1992, including the Exchange of Letters dated 17 November 1992 (the “IPPA”), and to recent discussions between the Government of Australia and the Government of the Republic of Indonesia concerning Investor-State Dispute Settlement under the IPPA and the IA-CEPA, I have the honour to confirm the following agreement reached between the Government of Australia and the Government of the Republic of Indonesia (“the Parties”):

- (a) The IPPA shall be terminated upon entry into force of the IA-CEPA and entry into force of this agreement, and the “date of termination” of the IPPA shall be the date upon which both requirements have been fulfilled;
- (b) From the date of termination, all provisions of the IPPA, including the provisions contained in paragraphs 1 and 2 of Article XV (Entry into force, duration and termination), and any rights or obligations arising from those provisions, shall cease to have legal effect and the Parties to the IPPA shall be released from any obligation further to perform the IPPA;
- (c) Notwithstanding paragraph (a) above, the termination of the IPPA shall not in any way affect any disputes that have been submitted under Article XI (Settlement of disputes between a Party and an investor of the other Party) or Article XII (Settlement of disputes between the Parties concerning the interpretation and application of the Agreement) of the IPPA prior to the date of termination. For the purposes of this paragraph, a dispute shall be considered to have been submitted under the IPPA when:

- i. with respect to a dispute under Article XI of the IPPA, an investor of a Party to the IPPA submits the dispute for settlement in accordance with the provisions of Article XI.2 or XI.3; and
 - ii. with respect to a dispute under Article XII of the IPPA, a Party to the IPPA makes a written request to submit a dispute to an arbitral tribunal under Article XII.2 of the IPPA.
- (d) The Parties agree that provisions for termination of the IPPA contained in this letter constitute an amendment to paragraphs 1 and 2 of Article XV (Entry into force, duration and termination) of the IPPA and shall be effective to terminate the IPPA.

I have the honour to propose that, if the foregoing is acceptable to the Government of the Republic of Indonesia, this letter and your letter of confirmation in reply, shall together constitute an agreement between Australia and Indonesia. This agreement shall enter into force on the date on which the IA-CEPA has entered into force and the Parties have notified each other by an exchange of notes that they have completed their respective domestic processes to bring this agreement into force.”

I have the honour to confirm that the foregoing is acceptable to the Government of the Republic of Indonesia, and that your letter and this letter of confirmation in reply shall together constitute an agreement between Indonesia and Australia.

Yours sincerely

Desra Percaya
Director-General of Asia-Pacific and African Affairs