

INVESTMENT GUARANTEE AGREEMENT BETWEEN MALAYSIA AND THE BELGO-LUXEMBURG UNION

Agreement between the Belgo-Luxemburg Economic Union and the Government of Malaysia on Encouragement and Reciprocal Protection of Investments

The Government of the Kingdom of Belgium, acting in its own name and on behalf of the Grand-Duchy of Luxemburg, under the Convention establishing the Belgo-Luxemburg Economic Union, and

The Government of Malaysia,

Desiring to create favourable conditions for greater economic co-operation between them and in particular for investments by nationals of one Contracting Party in the territory of the other Contracting Party;

Recognising that the encouragement and reciprocal protection of such investments will be conducive to stimulating individual business initiative and increasing prosperity in the territories of the Contracting Parties,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "nationals" means:

(a) In respect of the Belgo-Luxemburg Economic Union, any natural person who, according to the laws of Belgium or Luxemburg, is a citizen of Belgium or Luxemburg;

(b) In respect of Malaysia, any person who is a citizen of Malaysia according to its Constitution.

(2) The term "companies" means:

(a) In respect of the Belgo-Luxemburg Economic Union, any juridical person lawfully constituted in accordance with the legislation of Belgium or Luxemburg and having its seat in the territory of Belgium or Luxemburg;

(b) In respect of Malaysia, any company with a limited liability, incorporated in the territory of Malaysia, or any juridical person or any association of persons or partnership or sole proprietorship lawfully constituted in accordance with the law in force in any part of the territory of Malaysia.

(3) The term "investment" shall comprise every kind of assets and more particularly, though not exclusively:

(a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges, usufructs and similar rights;

(b) Shares and other types of holding;

(c) Titles to money or to any performance having an economic value;

(d) Copyrights, industrial property rights (such as patents for inventions, trademarks, industrial designs), know-how, trade names and goodwill; and

(e) Concessions under public law, including concessions to search for, extract or exploit natural resources;

Provided that such assets when invested:

(i) In Malaysia, are invested in a project classified as an 'approved project' by the appropriate Ministry in Malaysia, in accordance with the legislation and the administrative practice, based thereon;

(ii) In the Belgo-Luxemburg Economic Union, are invested under the relevant laws and regulations.

Any alteration of the form in which assets are invested shall not affect their classification as investment, provided that such alteration is not contrary to the approval, if any, granted in respect of the assets originally invested.

(4) The term "returns" shall mean the amounts yielded by an investment, and in particular, though not exclusively, shall include profits, interests, capital gains, dividends, royalties or fees.

Article 2. Promotion of Investments

(1) Each Contracting Party shall in its territory promote as far as possible the investments by nationals and companies of the other Contracting Party and admit such investments in accordance with its legislation.

(2) In particular each Contracting Party shall facilitate the granting of the necessary permits, in connection with such investments and with the carrying out of contracts of licence and technical assistance, both commercial and administrative, as well as with the activities of consultants and other qualified persons.

Article 3. Protection of Investments

(1) Each Contracting Party shall, within its territory, ensure full protection to the investments made in accordance with its legislation by nationals or companies of the other Contracting Party and shall not impair by unjustified or discriminatory measures the management, maintenance, use, enjoyment, extension, selling or liquidation of such investments.

(2) All investments, made by nationals or companies of one of the Contracting Parties shall enjoy fair and equitable treatment, in the territory of the other Contracting Party.

This treatment shall be no less favourable to that granted to nationals or companies of the most favoured nation and may in no case be less favourable than that recognised by international law.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this article, the treatment and protection referred to in the said paragraphs shall not include privileges which may be extended by either Contracting Party by virtue of agreements regarding the formation of a union for customs, trade, tariff or monetary matters.

Article 4. Expropriation

(1) Investments of nationals or companies of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation in the territory of the other Contracting Party except for a public purpose and against prompt, adequate and effective compensation. Such compensation, which shall be freely transferable, shall amount to the actual value of the investment expropriated either on the day immediately preceding the day on which the measure was taken or on the day immediately preceding the day on which the impending measure became public knowledge. The measures of expropriation shall be determined by due process of law in the territory of the Contracting Party in which the investment has been expropriated.

(2) Where a Contracting Party expropriates the assets of a company which is considered as its own company pursuant to paragraph (2) of Article 1 of this Agreement, and in which nationals or companies 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 in respect of the shareholders of such a company.

(3)

(a) The measures of nationalisation, expropriation or other measures having effect equivalent to nationalisation or expropriation shall not be discriminatory.

(b) The treatment referred to in paragraphs (1) and (2) of this Article shall not be less favourable than that accorded to nationals or companies of the most favoured nation.

Article 5. Transfers

(1) Subject to its laws and regulations, each Contracting Party in whose territory investments have been made by nationals or companies of the other Contracting Party, shall without undue delay allow the free transfer of:

(a) Interest, dividends, benefits and other current returns;

(b) Amortisation and contractual repayment of foreign loans for which Exchange Control approval has been obtained;

(c) Amounts assigned to cover expenses relating to the management of the investment;

(d) Additional contribution of capital necessary for the maintenance or development of the investment;

(e) Royalties and other payments deriving from right of licence and commercial, administrative or technical assistance.

(2) The treatment referred to in paragraph (1) of this Article may not be less favourable than that accorded to the nationals of a third state who are in a similar situation.

Article 6. Exchange Rates

(1) The transfers referred to in Articles 4 and 5 shall be effected at the exchange rates prevailing on the day the transfer is made.

(2) The rates of exchange and bank charges shall be determined by the respective banking system in the territory of each of the Contracting Parties and such rates and bank charges shall be fair and equitable.

Article 7. Subrogation

(1) Where one Contracting Party, or any public institution of the said Contracting Party, has granted any financial security against non-commercial risks in respect of an investment by nationals or companies in the territory of the other Contracting Party and payment has been made by the first Contracting Party or any public institution of this Party to its nationals or companies, the other Contracting Party shall recognise the rights of the first Contracting Party or any public institution of such Contracting Party by virtue of the principle of subrogation to the rights of the investor.

(2) Any such payment made by one Contracting Party or any public institution of the said Contracting Party, to its nationals in pursuance of this Agreement shall not affect the right of the nationals to take proceedings to the International Centre for Settlement of Investment Disputes in accordance with Article 10 of this Agreement, nor shall it affect the right of the said nationals to carry on the proceedings until the dispute is settled.

Article 8. Other Obligations

In the event of any matter being provided in this Agreement, being provided as well in the national legislation of either of the Contracting Parties, no provision of this Agreement shall prevent nationals or companies of either of the Contracting Parties who possess investments in the territory of the other Contracting Party from availing itself of the more favourable provisions.

Article 9. Special Agreements

Investments effected as a result of a special agreement between either Contracting Party and the investors of the other Contracting Party shall be governed by the provisions of this Agreement as well as by the provisions of the said special Agreement.

Article 10. Reference to the International Centre for Settlement of Investment Disputes

(1) Any dispute arising directly out of an investment, between either Contracting Party and a national of the other Contracting Party shall, as far as possible, be settled amicably between the Parties to the dispute.

(2) If any such dispute cannot be so settled within three months of a written notification of a sufficiently detailed claim, the dispute shall upon the request of the nationals of either of the Contracting Parties be submitted for conciliation or arbitration to the International Centre for Settlement of Investment Disputes, established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18th March, 1965. For this purpose, each Contracting Party, by this Agreement irrevocably consents in advance to submit

any such dispute to this Centre.

This consent implies renunciation of the requirement that the internal administrative or judicial resorts should be exhausted.

(3) A Contracting Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise as an objection the fact that the nationals, which is the other party to the dispute, have received in pursuance of an insurance policy an indemnity in respect of some or all of its losses.

Article 11. Disputes as to Interpretation between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through diplomatic channels.

(2) If any such dispute cannot be so settled, it shall upon the request of either Contracting Party be submitted to arbitration. The arbitral tribunal (hereinafter called "the tribunal") shall consist of three arbitrators, one appointed by each Contracting Party and the third, who shall be the Chairman of the tribunal, appointed by agreement of the Contracting Parties.

(3) Within two months of receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator, and within two months of such appointment of the two arbitrators, the Contracting Parties shall appoint the third arbitrator.

(4) If the tribunal shall not have been constituted within four months of receipt of the request for arbitration, either Contracting Party may, in the absence of any other agreement invite the President of the International Court of Justice to appoint the arbitrator or arbitrators not yet appointed. If the President is a national of either Contracting Party or if he is unable to do so, the Vice-President may be invited to do so. If the Vice-President is a national of either Contracting Party or if he is unable to do so, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party may be invited to make the necessary appointments, and so on.

(5) The tribunal shall establish its own rules of procedure.

(6) The tribunal's decision shall be final and the Contracting Parties shall abide by and comply with the terms of its award.

(7) Each Contracting Party shall bear the costs resulting from the appointment of its own member of the tribunal and of its representation in the arbitration proceedings; the costs resulting from the appointment of the office of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Parties, and this award shall be binding on both Parties.

Article 12. Application of Agreement

This Agreement shall apply to investments made in the territory of either Contracting Party in accordance with its legislation or rules or regulations by nationals or companies of the other Contracting Party prior to as well as after the entry into force of this Agreement.

Article 13. Entry Into Force and Duration

(1) This Agreement shall enter into force on the date of exchange of instruments of ratification.

(2) Subject to the following paragraphs, this Agreement shall remain in force for a period of ten years.

(3) Unless either of the Contracting Parties notifies the other Contracting Party through diplomatic channels the former's confirmation of the expiry of this Agreement at least six months before the end of the said ten years, this Agreement shall be automatically renewed for further periods of five years at a time. Either Contracting Party may, by giving at least six months' notice, terminate this Agreement in respect of any five years period subsequent to the first ten years mentioned in paragraph (2) of this Article.

(4) On expiry or termination of this Agreement investments made while the Agreement was in force shall continue to enjoy protection for a further period of five years.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in two originals in the English language at Kuala Lumpur this 22nd day of November 1979.

DR. MAHATHIR BIN MOHAMAD

Minister of Trade and Industry

For the Government of Malaysia

LUCIEN OUTERS

Belgium Minister of Foreign Trade

For the Belgo-Luxemburg Economic Union