

AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE KINGDOM OF MOROCCO FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of Malaysia and the Government of the Kingdom of Morocco (hereinafter referred to as the "Contracting Parties");

Desiring to expand and strengthen economic and industrial cooperation on a long term basis, and in particular, to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising the need to protect investments by investors of both Contracting Parties and to stimulate the flow of investments and individual business initiative with a view to promoting the economic prosperity of both Contracting Parties;

Have agreed as follows:

Article 1. Definitions

1. For the purposes of this Agreement:

(a) "investments" means every kind of asset invested in accordance with legislation, regulations and national policies in force in the territory of each of the Contracting Parties and in particular, (though not exclusively) includes:

(i) Movable and immovable property and any other property rights such as mortgages, pledges and liens;

(ii) Shares, stocks and debentures of companies or interests in the property of such companies;

(iii) Claims to money or to any performance under contract having a financial value;

(iv) Intellectual property rights, including rights with respect to copyrights, patents and utility models, trademarks and service marks, geographical indications, layout designs of integrated circuits, trade names, trade secrets, technical processes and know-how and goodwill;

(v) Business concessions conferred by law or under contract, including concessions to search for, extract, or exploit natural resources.

(b) "returns" means the amount yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties or fees;

(c) "investors" means:

(i) Any physical person possessing Malaysian or Moroccan citizenship or permanently residing in Malaysia or in Morocco, in accordance with the laws in force in Malaysia or Morocco respectively; or

(ii) Any legal person constituted under the law in force in each of the Contracting Parties, and any partnership, trust, joint-venture, organization, association or enterprise duly constituted in accordance with applicable laws of that Contracting Party;

(d) "Territory" means:

(i) with respect to Malaysia, all land territory comprising the Federation of Malaysia, the territorial sea, its bed and subsoil and airspace above;

ii) with respect to the Kingdom of Morocco, the territory of the Kingdom of Morocco, including any maritime area situated beyond the territorial waters of the Kingdom of Morocco and which has been or might in the future be designated by the laws of the Kingdom of Morocco in accordance with international laws as an area within which the Kingdom of Morocco may

exercise rights with regard to the sea-bed and sub-soil and the natural resources;

(e) "freely usable currency" means any currency that is widely used to make payments for international transactions and widely traded in the international principal exchange markets.

2. (i) The term "investments" referred to in paragraph 1(a) shall only refer to all investments that are made in accordance with the laws, regulations and national policies of the Contracting Parties.

(ii) Any alteration of the form in which assets are invested shall not affect their classification as investments, provided that such alteration is not contrary to the approval; If any, granted in respect of the assets originally invested.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to invest capital in its territory and, in accordance with its laws, regulations and national policies, shall admit such investments.

2. Investments of investors of each Contracting Party shall at all times be accorded equitable treatment and shall enjoy full and adequate protection and security in the territory of the other Contracting Party. Neither Contracting Party shall impair by discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of other Contracting Party.

3. Returns of investments, in case of their reinvestment in accordance with the law in force in each of the Contracting Parties, shall enjoy the same protection accorded to the initial investment.

Article 3. Most-favoured Nation Provisions

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall receive treatment which is fair and equitable, and not less favourable than that accorded to investments made by investors of any third State.

2. The provisions of this Agreement relative to the granting of treatment not less favourable than that accorded to the investors of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future customs union or free trade area or a common market or a monetary union or similar international agreement or other forms of regional cooperation to which either of the Contracting Parties is or may become a party, or the adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or

(b) Any international agreement or arrangement relating wholly or mainly to taxation, or any domestic legislation relating wholly or mainly to taxation.

Article 4. Compensation for Losses

Investors of one Contracting Party whose investments, in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to investors of any third State.

Article 5. Expropriation

Neither Contracting Party shall take any measures of expropriation or nationalisation against the investments of an investor of the other Contracting Party except under the following conditions:

(a) The measures are taken for a lawful or public purpose and under due process of law;

(b) The measures are non-discriminatory;

(c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investments affected immediately before the measure of dispossession became public knowledge, and it shall be freely transferable in freely usable currencies from the Contracting

Party. Any unreasonable delay in payment of compensation shall carry an interest at prevailing commercial rate as agreed upon by both parties unless such rate is prescribed by law.

Article 6. Transfers

1. Each Contracting Party shall, subject to its laws and regulations, guarantee to investors of the other Contracting Party the free transfer, after discharge of fiscal obligations, of their assets invested in particular, though not exclusively, includes:

- (a) capital invested and any additional amount used for maintenance or extension of the investment;
- (b) Profits, dividends, interest, royalties or any other current revenue;
- (c) Funds in repayment of borrowings/loans given by investors of one Contracting Party to the investors of the other Contracting Party which, both Contracting Parties have recognised as investment;
- (d) Proceeds from sale or liquidation of all or any part of the investment;
- (e) Salaries, wages and other remunerations received by national of one Contracting Party who have obtained in the territory of the other party the corresponding work permits, relative to an investment, pursuant to the exchange regulations in force in each Contracting Party.

2. Transfers mentioned in paragraph (1) shall be effected without delay in freely usable currency at the rate of exchange applicable on the date of transfer and under the current exchange regulations

3. The Contracting Parties undertake to accord to the transfers referred to in paragraph (1) of this Article a treatment as favorable as that accorded to transfers originating investments made by investors of any third State.

Article 7. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Disputes between one of the Contracting Parties and an investor of the other Contracting Party, in connection with investment, shall be settled, as far as possible amicably, by consultations and negotiations between the parties in dispute.

2. If these disputes cannot be settled in this way within six (6) months following the date of a written notification, the dispute can be submitted as the investor may choose:

- (a) Either to a competent court of the Contracting Party in whose territory the investment was made;
- (b) For arbitration to the International Center for Settlement of Investment Disputes (ICSID) set up, by the "Convention on Settlement of Investment Disputes between States and Nationals of other State" opened for signature, at Washington on March 18th 1965.

3. Neither Contracting Party may raise as an objection at any stage of proceedings or enforcement of an arbitral award, the receipt, by the investor of the other Contracting Party to the dispute, of an indemnity covering wholly or partially, his losses under an insurance policy.

4. The arbitral tribunal shall base its decision on the national law of the Contracting Party involved in dispute, in whose territory the investment was made including the rules relative to conflicts of law, the provisions of this Agreement; the provisions of particular agreements relative to investment and the provisions of international law.

5. The arbitration award shall be final and binding for all parties in dispute. Each Contracting Party commits itself to execute the award according to its national law.

Article 8. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.

2. If a dispute between the Contracting Parties cannot be settled after a period of six (6) months from the date of beginning of negotiation, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one member of the tribunal and the two members shall then select jointly, a third-arbiter from a national of a third State as Chairman of the tribunal. The

two members shall be appointed within two (2) months, and the Chairman shall be appointed within three (3) months, from the date of notification from one Party to the other Party of its intention to submit the dispute to an arbitral tribunal.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may invite the President of the International Court of Justice to make the 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 function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party 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 member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal shall determine its own procedure.

Article 9. Subrogation

If a Contracting Party or its designated agency makes a payment to any of its investors under a guarantee against non-commercial risk it has granted in respect of an investment, the other Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 7, recognize the transfer of any right or title of such investors to the former Contracting Party or its designated agency and the subrogation of the former Contracting Party or its designated agency to any right or title.

Article 10. Application to Investments

1. This Agreement shall apply to investments made in freely usable currency in the territory of either Contracting Party made in accordance with its laws, regulations or national policies by investors of the other Contracting Party prior to as well as after the entry into force of this Agreement. This Agreement shall however not apply to disputes that arise before its entry into force.

2. Investments ruled by provisions of a particular agreement between one of the Contracting Parties and investors of the other Contracting Party shall be governed by the terms of that particular agreement in so far as it contains provisions more favourable than those set out in this Agreement.

Article 11. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force thirty (30) days after the later date on which the Governments of the Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled. The later date shall refer to the date on which the last notification letter is sent.

2. This Agreement shall remain in force for a period of ten (10) years and shall continue in force, unless terminated in accordance with paragraph 3 of this Article.

3. Either Contracting Party may by giving one (1) year's written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten (10) year period or anytime thereafter.

4) With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of all of the other Articles of this Agreement shall continue to be effective for a period of ten (10) years from such date of termination.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Rabat, Morocco this 16th day of April 2002 in Bahasa Melayu, Arabic and the English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF MALAYSIA

FOR THE GOVERNMENT OF THE KINGDOM OF MOROCCO