

INVESTMENT GUARANTEE AGREEMENT BETWEEN MALAYSIA AND THE REPUBLIC OF FRANCE

Preamble:

The Government of the French Republic of the one part, and the Government of Malaysia of the other part,

Whereas both parties wish to intensify the economic co-operation between the two countries;

And whereas both parties are eager to protect and stimulating investments,

Have agreed to the following:

Article I.

For the purpose of this Agreement:

(1) The term "national" shall mean:

(a) In respect of Malaysia, a person who is a citizen according to its Constitution; and

(b) In respect of the Republic of France, a person who is national of the French Republic, according to the French law.

(2) The term "company" shall mean:

(a) In respect to Malaysia, any company with a limited liability or without limited liability incorporated in the territory of Malaysia or any legal person or any association of persons lawfully constituted in accordance with its legislation;

(b) In respect of the Republic of France, any legal person constituted in France, in accordance with the French Law and having its seat in France, as well as any company as defined in subparagraph (a) of this paragraph, controlled directly or indirectly by a national of the Republic of France, or by a legal person constituted in accordance with the French Law.

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

(a) Movable and immovable property as well as any other rights in rem such as mortgage, lien, pledge, usufruct and similar rights;

(b) Shares and other kinds of interests in companies;

(c) Copyrights, industrial property rights, patents, technical processes, trademarks and tradenames and goodwill;

(d) Such business-concessions under public law, including on the continental shelf, in particular concessions regarding the prospecting for, or the exploration or the extraction or winning of natural resources; and

(e) Title to money or to any performance having an economic value;

Provided that such assets are invested:

(i) In Malaysia, is invested under the relevant law and regulations before or after the coming into force of this Agreement;

(ii) In the Republic of France, is invested under the relevant laws and regulations either before or after the coming into force of this Agreement.

Article II.

Both contracting parties will grant to the other party's nationals, private or corporate the same security and protection for

their possessions, rights and undertakings as those secured by their own nationals and apply for taxation treatment no less favourable than that accorded to nationals or companies in similar positions.

Article III.

In case of expropriation, nationalization or any other measure of dispossession direct or indirect, of possessions, rights and interests mentioned in Article II, the party taking any of these actions must make provision at the time of execution, for the prompt payment of an effective and transferable compensation without any unjustified delay.

Article IV.

Each contracting party shall allow the nationals, private or corporate concerns of the other contracting party, the transfer of:

- (a) Invested capital;
- (b) Interests, dividends, royalties and other income deriving from the invested capital; and
- (c) Compensation for the expropriation, nationalization or dispossession, mentioned in Article III.

Article V.

Investments made under special agreement of one of the Parties with respect to the nationals, private or corporate concerns of the other Party will be governed by the dispositions of that special agreement.

If the investors request it, each of the Contracting Parties will accept to include in the said special agreement a provision to appeal, should there be a dispute, to the International Centre for the Settlement of Disputes regarding Investments (ICSID).

Article VI.

Each Contracting Party recognises the subrogation of the other Contracting Party which has made payments to its own nationals who have invested in the other Party's territory, under the guarantee of the present agreement, in all rights that these nationals hold under it.

However, in respect to investments referred to in Article V of this Agreement when an application has been made to ICSID, the subrogation of the party which has carried out the payments to its own nationals will apply only in respect to the rights conferred to them by the decision of this jurisdiction.

Article VII.

For matters governed by this Agreement other than fiscal matters dealt with in Article II, the nationals whether private or corporate concerns of both Contracting Parties will be subject on the territory of the other Party to the treatment of the most favoured nation.

Article VIII.

(1) Disputes concerning the interpretation or application of this Agreement should, if possible, be settled by the two Contracting Parties.

(2) If a dispute cannot be settled within the following six months it shall, upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such arbitral tribunal shall be established in each individual case, each Contracting Party appointing one member, and these two members shall then agree upon a national of a third country as their Chairman to be appointed by the two Contracting Parties. Such members shall be appointed within two months; and such Chairman within three months, after either Contracting Party has made known to the other Contracting Party that it wants the dispute to be submitted to an arbitral tribunal.

(4) If the arbitral tribunal is not constituted within the period specified in clause (3) above and no extension of the period has been agreed to by both Contracting Parties and in the absence of any other arrangement for the settlement of the dispute either Party may invite the Secretary General of the United Nations to make the necessary appointments.

(5) The arbitral tribunal shall base its decision on the provisions of the present agreement in conformity with the principles of law. Before the arbitral tribunal gives its decision, it may at any stage of the proceedings propose to the Parties an amicable settlement.

(6) The arbitral tribunal shall reach its decision by a majority of votes. Such decisions shall be binding. Each Contracting Party shall bear the cost of its appointed member; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. Unless the Contracting Parties agree otherwise, the arbitral tribunal shall determine its own procedure.

Article IX.

(1) This Agreement will be approved according to the constitutional procedures in force in the territory of each one of the Contracting Parties.

(2) The present Agreement will come into force on the first day of the month following the exchange of notifications establishing that both Parties have satisfied the above condition.

(3) This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, after the expiry of the initial period of ten years either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

(4) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Article I to IX shall remain in force for a further period of ten years from that date.

IN WITNESS HEREOF the undersigned, being duly authorised thereto by their respective Governments have signed the present Agreement.

DONE AT France, Paris, this 24th day of April in 1975, in four original copies, two in Bahasa Malaysia, two in French, both texts being equally authentic.

For the Government of the French Republic: Jean Sauvagnargues.

For the Government of Malaysia: Tun Abdul Razak bin Hussein.