

Agreement between the Government of the Swiss Confederation and the Government of Malaysia concerning the promotion and reciprocal protection of investments

Desiring to enhance economic cooperation between the two States,

In order to create favourable conditions for investment capital in both States and intensify cooperation between nationals and companies of the two States in the fields of science, technology and industry,

Recognizing the need to protect investments of nationals and companies of the two States and fostering the transfer of capital for the economic prosperity of both countries;

Have agreed as follows:

Article 1.

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

Article 2.

For the purposes of this Convention:

1. the term "nationals" means natural persons who, according to the laws of each Contracting Party, shall be treated as nationals of that State.

2. The term "companies" means:

a) As regards the Swiss Confederation, communities, schools or foundations as well as having legal personality or limited partnerships and other communities of persons without legal personality incorporated or constituted under the law in which nationals or Swiss, directly or indirectly, a preponderant interest;

b) With regard to any Malaysia, with a limited liability company incorporated into the territory of Malaysia, or any legal person or persons of any community established in accordance with its legislation.

3.

a) The term "investment" includes all categories of goods and in particular, though not exclusively:

i) Ownership of movable and immovable property as well as any other rights in rem such as mortgages, pledge, security interests, and similar usufruct rights;

ii) Shares and other forms of equity participation;

iii) Monetary claims and rights to any performance having an economic value;

iv) Copyrights, industrial property rights, such as patents, trademarks, industrial designs, trade names), knowhow and goodwill; and

v) The concessions under public law, including extract concessions to search for or exploit natural resources.

b) Provided that such goods

i) Malaysia are invested in a project classified by the competent ministry in Malaysia as an approved project "in conformity with its legislation and administrative practices. the classification of "approved" may, upon request, be granted to an

investment made prior to the entry into force of this Agreement to address specific conditions resulting from the law applicable in each individual case.

ii) In Switzerland are invested in accordance with the relevant laws and regulations.

c) Any alteration of the form of investment shall not affect their classification as investment, provided that such change is not contrary to the approvals granted where appropriate on the originally invested assets.

4. The term means returns the amounts reported by an investment present a period determined in the form of net profit or interests.

Article 3.

1. Each Contracting Party shall protect within its territory investments made in accordance with its legislation by nationals or companies of the other Contracting Party and shall not hinder by unjustified discriminatory measures or the management, maintenance, use, enjoyment, increasing the sale and, where appropriate, the liquidation of such investments. Each Contracting Party shall facilitate inter alia the licensing requirements relating to these investments and with the carrying out of licensing agreements and technical assistance administrative trade as well as well as for advice and other qualified persons of foreign nationality.

2. In particular, each Contracting Party shall in its territory fair and equitable treatment to investments of nationals or companies of the other contracting party. This treatment shall not be less favourable than that granted by each contracting party to its own nationals or companies or to the treatment accorded to nationals or companies of favorisée.

3. Notwithstanding the provisions of article 3, a Contracting Party which has concluded or may conclude with one or more other States an agreement regarding the formation of a customs union, a regional arrangement or interregional or free trade, shall be free to grant a more favourable treatment to investments made by companies and nationals of the party or parties involved in this arrangement or by nationals and companies of some of these parties.²²

Article 4.

1. Each Contracting Party in whose territory investments have been made by nationals or companies of the other Contracting Party shall allow the free transfer of:

- a) Profits, dividends, interests and other current income;
- b) Capital allowances and repayments of loans contracted abroad approved by the Foreign Exchange Control;
- c) The amounts allocated to cover expenses relating to the management of the investment;
- d) Additional contributions of capital necessary for the maintenance of the development or investment;
- e) Royalties and other payments deriving from licence fees and commercial or administrative assistance.

2. Each Contracting Party shall allow the free transfer of proceeds from the total or partial liquidation of an investment including any more values. Notwithstanding the provisions of this clause, either Contracting Party may reserve the right to limit the balance of payments under the transfer of that product 20 per cent of the total investment per year.

Article 5.

Neither Contracting Party shall take any measures of expropriation, nationalization or dispossession, other direct or indirect, against investments of nationals or companies of the other contracting party unless the measures are taken in the public interest, on a non-discriminatory basis, that the legal requirements are observed and that is made effective and adequate compensation. The amount of compensation shall be set at the time of expropriation, nationalization or dispossession other shall be settled in freely convertible currency and transferable and shall be paid without undue delay to the person entitled thereto.

Article 6.

Subject to the provisions of article 2 (3) (b) (i) and (ii) the provisions of this Convention shall also apply to investments in the territory of a Contracting Party in accordance with its laws and regulations and requirements by nationals or companies of the other contracting party prior to the entry into force of this Convention.

Article 7.

The more favourable terms than those of this Agreement which have been agreed to by one of the Contracting Parties with nationals or companies of the other contracting party prior to the entry into force of this Convention shall not be invalidated by this Convention.

Article 8.

If one of the Contracting Parties has granted any financial guarantee against non-commercial risks with regard to an investment made by a national or enterprise in the territory of the other contracting party, the latter shall recognize the subrogation of the guarantor of the Rights of the investor for the damage, if payment has been made under this guarantee.

Article 9.

1. If any dispute should arise between the contracting parties concerning the interpretation or the implementation of the provisions of this Convention, it shall be settled through diplomatic channels.
2. If both contracting parties fail to settle the dispute shall be submitted, at the request of either contracting party to an arbitral tribunal composed of three members. each Contracting Party shall appoint an arbitrator. the two arbitrators so nominated shall appoint a chairman who shall be a national of a third State.
3. If one of the Contracting Parties has not acted within two months at the invitation of the other contracting party to designate its arbitrator, the arbitrator shall be appointed upon request by the latter Contracting Party by the President of the International Court of Justice.
4. If the two arbitrators cannot reach an agreement about the choice of the Chairman within two months after their appointment the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.
5. If in the cases specified in paragraphs 3 and 4 of this article, the President of the International Court of Justice is prevented from exercising his mandate or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President and if the latter is prevented or if he is a national of either Contracting Party, the appointment shall be made by the most senior member of the Court who is not a national of either of the Contracting Parties.
6. Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.
7. The decisions of the Tribunal shall be taken by a majority of votes and shall be final and binding on the contracting parties.
8. Each Contracting Party shall bear the costs of its own member and of its counsel in the arbitral proceedings. other common costs shall be borne in equal parts by both contracting parties.

Article 10.

1. This Agreement shall enter into force when both Contracting Parties shall have notified each other of the completion of the constitutional formalities required for the conclusion and entry into force of international treaties and shall remain valid for a period of five years. a Less than be denounced in writing six months before the expiration of the period referred to above, this Convention shall be considered as renewed for a period of two years and so on.
2. In the event of termination of this Agreement, the provisions of articles 1 to 9 above shall apply for a period of ten years for investments made prior to the termination of the Agreement.