

AGREEMENT BETWEEN THE MALAYSIAN FRIENDSHIP AND TRADE CENTRE, TAIPEI AND THE TAIPEI ECONOMIC AND CULTURAL OFFICE IN MALAYSIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Malaysian Friendship and Trade Centre, Taipei and the Taipei Economic and Cultural Office in Malaysia, hereinafter referred to as "Parties";

Being desirous of promoting closer economic cooperation; and

Recognising that the protection of investments will stimulate the flow of investments and business initiative.

Undertake to seek the approval of their respective authorities on matters relating to the promotion and protection of investments in the relevant places.

Both Parties have agreed to seek the approval of their respective authorities in respect of the Agreement annexed hereto.

Article 1. Definitions

(1) For the purpose of this Agreement:

(a) "relevant places" means the places of operation to be designated by the respective authorities of the parties;

(b) "investments" means every kind of asset and in particular, though not exclusively, includes:

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

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

(iii) a claim to money or a claim to any performance having financial value;

(iv) intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, trade secrets, technical processes and know-how and goodwill;

(v) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract, or exploit natural resources. The said term "investments" shall refer to those investments approved by the respective authorities of the relevant places receiving the investments in accordance with their laws, regulations and administrative practices.

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

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

(d) "investor" means:

(i) any natural person who is a citizen or permanent resident of the relevant places;

(ii) any company or any juridical person which is properly incorporated or constituted in the relevant places;

(e) "freely usable currencies" means the United States Dollar, Pound Sterling, Deutschemark, French Franc, Japanese Yen or any other currency that is widely used to make payments for international transactions and widely traded in the international principal exchange markets;

(f) "expropriation" means nationalisation or confiscation of investments of investors or taking of property by the respective authorities of the relevant places without proper compensation which causes investors to suffer damages therefrom, or

arbitrary seizure of any property by the respective authorities of the relevant places or an agency or instrumentality thereof that deprives investors of any rights in or in connection with their investments;

(g) "inconvertibility" means:

(i) a situation where investors of a relevant place are unable to convert their original investments or returns into freely usable currencies and repatriate their original investments or returns from the other relevant place within 30 days due to foreign exchange controls, prevention or restrictions in repatriation of their original investments or returns imposed by the authorities or an agency or instrumentality of the other relevant place; or

(ii) a situation where investors of a relevant place suffer damages in repatriating their original investments or returns from the other relevant place due to discriminatory exchange rates imposed by the authorities or an agency or instrumentality of the other relevant place.

Article 2. Promotion and Protection of Investments

Favourable conditions for investors to make investments in the relevant places in accordance with their respective laws, regulations and administrative practices shall be encouraged and promoted.

Article 3. Most-favoured-nation Provisions

(1) Investments of Investors from one relevant place investing in the other, and the returns therefrom, shall receive treatment which is fair and equitable, and no less favourable than that accorded to investments and returns made by investors of any third State.

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

Article 4. Exceptions

The provisions of this Agreement relative to the granting of treatment no less favourable than that accorded to the investors of any third State shall not be construed so as to oblige the respective authorities of one Party to extend to investors from the other relevant place the benefit of any treatment, preference or privilege resulting from:

(a) any existing or future customs union or free trade area or a common external tariff area or a monetary union or similar international agreement or other forms of regional cooperation to which the respective authorities of either of the Parties is or may become a party'; or

(b) 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

(c) any international agreement or matters relating wholly or mainly to taxation.

Article 5. Expropriation

Where any measure of expropriation is taken against the investments of -investors from either relevant place, such measures shall be taken for a lawful purpose, on a non-discriminatory basis and against compensation which shall be freely transferable in freely usable currencies without unreasonable delay. The value of such compensation shall amount to the market value of the investments expropriated which is to be determined on the day immediately before such measures become public knowledge. Any unreasonable delay in payment of compensation shall carry an appropriate interest at the normal commercial rate or as agreed upon by the respective authorities of both Parties.

Article 6. Repatriation of Investments

(1) Investors from either relevant place shall be accorded transfers without delay in any freely usable currencies of their capital and returns from any investment in the other relevant place. Such transfers are subject to the right of each Party, in exceptional financial or economic circumstances, to exercise equitably and in good faith powers conferred by its laws and regulations at the time the investment is made as well as new laws thereafter, provided that any existing investors should not be made worse off than at the time of approval of investment.

(2) The exchange rates applicable to such transfers in paragraph (1) of this Article shall be the rate of exchange prevailing at the time of remittance.

(3) The transfers referred to in paragraph (1) of this Article shall receive treatment as favourable as that accorded to transfers originating from investments made by investors of any third State.

(a) Except as herein otherwise provided, in the event of the occurrence of inconvertibility in either relevant place, investors of that other relevant place may invoke the convertibility rights and transfer their blocked local currency to an account of the Party of that other relevant place or any other account designated by such Party and request the Party of the relevant place where the inconvertibility occurs to compensate the damages resulting therefrom. The Party of the said other relevant place or any agency or instrumentality thereof may then present those blocked local currency to the Party of the relevant place where the inconvertibility occurs or any agency or instrumentality thereof for remittances in the form of freely usable currencies.

(b) Where damages are suffered by the investors or the Party of a relevant place or any agency or instrumentality thereof as a result of inconvertibility, the Party of the relevant place where the inconvertibility occurs or any agency or instrumentality thereof shall pay compensation to the firstmentioned Party or any agency or instrumentality thereof to the amount of the damages, in freely usable currencies, into such accounts as the said firstmentioned Party may designate.

Article 7. Settlement of Disputes

Any dispute

(1) between an investor and the respective authorities of the relevant places in connection with its investments;

(2) between the Parties hereto concerning the interpretation or application of this Agreement;

shall, as far as possible, be settled amicably through negotiation between the parties to the dispute, and failing which, shall be referred to arbitration on such terms and conditions as the parties may agree.

Article 8. Subrogation

1) if either of the respective authorities or its designated body makes a payment to its investors owing to the indemnity it has granted under this Agreement in respect of an investment in the other relevant place, the other respective authority shall, without prejudice to the rights of the former respective authority, recognise:

(a) the transfer from such investor to the respective authority or its designated body of any right or title to, or interest in, any assets, currencies, credits or other property, along with any claim or cause of action arising directly in connection with an investment;

(b) that the respective authority or its designated body is entitled, by virtue of subrogation, to exercise the rights and assert the claims of the investor who has received the payment.

The subrogated rights or claims shall not be greater than the original rights or claims of the investor who has received the payment.

(2) Any payment made by the respective authority or its designated body shall not affect the rights of the respective authority or its designated body under Article 7.

Article 9. Application to Investments

This Agreement shall apply to investments made in the relevant places prior to as well as after the entry into force of this Agreement.

Article 10. Entry Into Force, Duration and Termination

(1) This Agreement shall enter into force upon the exchange of letters between the Parties informing each other of the approval of this Agreement by their respective authorities.

(2) This Agreement shall remain in force unless terminated in writing by giving one year's notice. In respect of investments made prior to the effective date of termination, the provisions of Article 1 to 9 of this Agreement shall remain in force for a period of ten years.

IN WITNESS WHEREOF, the undersigned, have signed this Agreement. Done in duplicate at Taipei this eighteenth Day of February, 1993, in the English Language.

DATO' SYED MANSOR SYED KASSIM BARAKBAH

THE PRESIDENT MALAYSIAN FRIENDSHIP AND TRADE CENTRE, TAIPEI

HUANG HSIN-PI

THE REPRESENTATIVE TAIPEI ECONOMIC AND CULTURAL OFFICE IN MALAYSIA