

AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE REPUBLIC OF ITALY CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The Government of Malaysia and the Government of the Republic of Italy (hereinafter referred to as the "Contracting Parties"):

DESIRING to intensify economic cooperation between both Contracting Parties;

INTENDING to create favourable conditions for investments by investors of either Contracting Party; and

RECOGNIZING that encouragement and protection of such investments will benefit the economic prosperity of both Contracting Parties;

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investment" means every kind of asset accepted in conformity with the respective laws, regulations and administrative practices of either Contracting Party, and in particular, though not exclusively, includes:

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

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

(c) A claim to money or a claim to any performance having economic value;

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

(e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract, or exploit natural resources;

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.

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

(3) The term "investor" means:

(a) For Malaysia, any company with or without limited liability, or any juridical person or any association of persons, partnership or sole proprietorship which is incorporated or lawfully constituted in the territory of Malaysia making investments in the territory of the other Contracting Party;

(b) For the Republic of Italy, every physical or legal person as well as any other corporation including interest associations, which is recognised as a resident by the legislation and regulations in force, making investments in the territory of the other Contracting Party.

(4) The term "territory" shall mean, in addition to the land within its boundary limits, also the territorial sea.

The latter includes the territorial waters and the subsoil below such waters upon which the Contracting Parties exercise their

sovereignty, sovereign rights, or jurisdictional rights, in accordance with international law.

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 in its territory and subject to its rights to exercise powers conferred by its laws, shall admit such investments.
- (2) Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment, and shall enjoy full protection and security in the territory of the other Contracting Party.

Article 3. Most Favoured Nation

- (1) The treatment accorded to the investors of either Contracting Party in the territory of the other Contracting Party shall not be less favourable than that accorded to the investments by investors of any third State.
- (2) The treatment accorded to the activities associated with investments by investors of either Contracting Party in the territory of the other Contracting Party shall not be less favourable than that accorded to the activities associated with investments by investors of any third State.

Article 4. Exceptions

The treatment mentioned under Article 3 shall not apply to any advantage accorded to investors of a third State by either Contracting Party based on the membership of that Contracting Party in a Customs union, Common Market, Free Trade Zone or other forms of regional cooperation, economic multilateral Agreement or based on an Agreement concluded between that Contracting Party and a third State on avoidance of double taxation, or for facilitation of frontier trade.

Article 5. Compensation for Damages

When investments by investors of either Contracting Party suffer losses owing to war, other armed conflict, a state of national emergency or other similar events in the territory of the other Contracting Party, they shall receive adequate compensation. Investors of either Contracting Party shall enjoy, in the territory of the other Contracting Party a treatment, in any case, not less favourable than that accorded to investors of any third State.

Article 6. Expropriation

Neither Contracting Party shall take any measures of expropriation, nationalization or any other dispossession, having effect equivalent to nationalization or expropriation against the investment of investor of the other Contracting Party except under the following conditions:

- (a) The measures are taken for a public purpose and under the 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 occurred became public knowledge and it shall be freely transferable in freely convertible currencies from the Contracting Party. The compensation shall be paid without unreasonable delay. Such compensation shall include interest at the prevailing market rate in the Country from the date of nationalization or expropriation until the date of payments.

Article 7. Repatriation of Investments

- (1) Each Contracting Party shall, subject to its laws, regulations and administrative requirements allow without unreasonable delay the transfer in any convertible currency of:
- (a) The net profits, dividends, royalties, technical assistance and technical fees, interests and other current income, accruing from any investments of the investors of the other Contracting Party;
- (b) The proceeds from the total or partial liquidation of any investments made by investors of the other Contracting Party;
- (c) Funds in repayment of loans given by investors of one Contracting Party to investors of the other Contracting Party which both Contracting Parties have recognised as investments; liquidation of any investments made by investors of the other

Contracting Party;

(d) The remaining part of the earnings of nationals of the other Contracting Party who are allowed to work in connection with an investment in its territory after payment of taxes and deduction of their living expenses spent therein.

(2) Without restricting the generality of Articles 3 and 4 of this Agreement, the Contracting Parties undertake to accord to transfers referred to in paragraph (1) of this Article a treatment as favourable as that accorded to transfers originating from investments made by investors of any third State.

Article 8. Subrogation

In case one Contracting Party has granted any guarantee against non-commercial risks in respect of an investment by its investor in the territory of the other Contracting Party and has made payment to such investor under the guarantee, the other Contracting Party shall recognize the transfer of the rights of such investor to the one Contracting Party and the subrogation of the one Contracting Party shall not exceed the original rights of such investor. As regards the transfer of payments to be made to the Contracting Party by virtue of such subrogation Articles 5 and 6 shall apply respectively.

Article 9. Transfers

Transfers under Articles 5, 6, 7 and 8 shall be made without undue delay, and in any case not later than three months, after the performance of the fiscal burdens. Such transfers shall be made in convertible currency at the rates of exchange in force for current transactions on the date the transfer is made. Convertible currency means any currency that is widely used to make payments for international transactions and is widely traded in the international principal exchange markets.

Article 10. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) All kinds of disputes or differences, including disputes over the amount of compensation for expropriation, nationalization or similar measures, between one Contracting Party and an investor of the other Contracting Party concerning an investment of that investor in the territory of the former Contracting Party shall, if possible, be settled amicably.

(2) If such disputes or differences cannot be settled according to the provisions of paragraph (1) of this Article within six months from the date of request for settlement, the investor concerned may submit the dispute to: paragraph (1) of this Article within six months from the date of request for settlement, the investor concerned may submit the dispute to:

(a) The competent court of the Contracting Party for decision; or

(b) The International Center for the Settlement of Investments Disputes through Conciliation or Arbitration established under the Convention on the Settlement of Investments Disputes between States and Nationals of other States, done in Washington on March 18, 1965.

(3) Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and a Contracting Party has failed to abide by or comply with the award rendered by the Arbitral Tribunal.

Article 11. Settlement of Disputes between Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall be settled, as far as possible, through friendly consultation by the Contracting Parties through diplomatic channels.

(2) If such disputes cannot be settled within three months from the date on which either Contracting Party informs in writing the other Contracting Party, they shall, upon the request of either Contracting Party, be submitted for settlement to an arbitral tribunal in accordance with the provisions of this Article.

(3) The arbitral tribunal shall be constituted in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. The two members shall then select a national of third State who shall act as Chairman (hereinafter referred to as the Chairman). The Chairman shall be appointed within three months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this Article either Contracting Party shall not have appointed its

arbitrator or the two arbitrators shall not have agreed on the Chairman, a request may be made to the President of the International Court of Justice to make the appointment. If he happens to be 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 appointment. If the Vice-President also happens to be a national of either Contracting Party or 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 appointment.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the cost of its own arbitrator and its counsel in the arbitral proceeding; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal shall determine its own procedure.

Article 12. More Favourable Treatment

If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other specific provisions or contracts is more favourable than that accorded by this Agreement, the more favourable treatment shall be accorded.

Article 13. Application to Investments

The present Agreement shall also apply to investments made prior to the entering into force of this Agreement by investors of both Contracting Parties in each other's territory.

Article 14. Relation between Governments

The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations.

Article 15. Entry Into Force, Duration and Termination

(1) The present Agreement shall enter into force three months after the notification between the Contracting Parties of the accomplishment of their respective internal procedures of ratification and execution. It shall remain in force for a period of ten years and shall continue to be in force thereafter for another period of five years and so forth unless denounced in writing by either Contracting Party one year before its expiration.

(2) In respect of investments made prior to the date of termination of the present Agreement, the provisions of Articles 1 to 14 shall continue to be effective for a further period of five years from the date of termination of the present Agreement.

FOR THE GOVERNMENT OF MALAYSIA

FOR THE GOVERNMENT OF THE REPUBLIC OF ITALY