

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF SAUDI ARABIA AND THE GOVERNMENT OF MALAYSIA CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Kingdom of Saudi Arabia and the Government of Malaysia (herein after referred to as the "Contracting Parties");

Desiring to intensify economic cooperation between both Countries, intending to create favourable conditions for investments by investors of either Contracting Party in the territory of the other Contracting Party;

Recognising that the reciprocal promotion and protection of such investments are apt to stimulate private business initiative and to increase the prosperity of both Countries;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "investment" means every kind of asset, owned or controlled by an investor of a Contracting Party in the territory of the other Contracting Party according to its legislation and in particular, but not exclusively includes:

- (a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges, usufructs and similar rights;
- (b) Shares, stocks and debentures of companies and other kinds of rights or interests in companies as well as securities issued by a Contracting Party or any of its investors;
- (c) Claims to money such as loans or to any performance having economic value associated with an investment;
- (d) Intellectual property rights, including but not limited to copyrights, patents, industrial designs, know-how, trademarks, trade and business secrets, trade names, good-will;
- (e) Any right conferred by law or under contract or any licenses, permits or concessions issued according to law.

Any alteration of the form in which assets are invested or reinvested shall not affect their classification as investment, provided that such alteration is not in conflict with the legislation of the Contracting Party and the approval, if any, granted in respect of the assets originally invested in the territory of which the investment is made.

2. The term "returns" means the amounts yielded by an investment in particular, profits, dividends, royalties, capital gains or any similar fees or payments.

3. The term "investor" means:

(a) In respect of Malaysia:

- (i) Any natural person possessing the citizenship of Malaysia in accordance with its laws; or
- (ii) Any corporation, partnership, trusts, joint-venture, organization, association or enterprise incorporated or duly constituted in accordance with its applicable laws.

(b) In respect of the Kingdom of Saudi Arabia:

- (i) Natural persons possessing the nationality of the Kingdom of Saudi Arabia in accordance with the law of the Kingdom of Saudi Arabia;

(ii) Any legal entity constituted in accordance with the laws of the Kingdom of Saudi Arabia and having its head office in its territory such as corporations, enterprises, cooperatives, companies, partnerships, offices, establishments, funds, organizations, business associations and other similar entities irrespective of whether or not they are of limited liability; or

(iii) The Government of the Kingdom of Saudi Arabia and its financial institutions and authorities such as the Saudi Arabian Monetary Agency, public funds and other similar governmental institutions existing in Saudi Arabia.

4. The term "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 Saudi Arabia, territory means in addition to the zones contained within the land boundaries, the marine and submarine zones over which the Kingdom of Saudi Arabia exercises sovereignty and sovereign or jurisdiction rights under international law.

5. The term "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, as accepted by the investors.

6. The term "national policies" means policies formulated and published by the Governments from time to time.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its legislation and national policies.

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.

3. Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

Article 3. Most-favoured Nation Provision

1. In accordance with its laws and regulations, each Contracting Party shall in its territory accord investments and returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments and returns of its own investors, or to investments and returns of investors of any third State whichever is the more favourable.

2. Each Contracting Party shall accord the investors of the other Contracting Party in connection with the management, maintenance, use, enjoyment or disposal of investments or with the means to assure their rights to such investments like transfers and indemnification or with any other activity associated with this in its territory, treatment not less favourable than the treatment it accords to its investors or to the investors of a third State, whichever is more favourable.

3. The provisions of this Article 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 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 of Losses

Investors of either Contracting Party whose investments suffer losses in connection with their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of general emergency or revolt shall be accorded treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable by such other Contracting Party than that accorded by the latter Contracting Party to its own investors or to the investors of a third state.

Article 5. Expropriation

1. Investments by investors of either Contracting Party shall not be expropriated, nationalised, or subjected to any other measure, the effects of which would tantamount to expropriation or nationalisation by the other Contracting Party except for the benefit of that Contracting Party provided that these measures are:

- (i) Not discriminatory;
- (ii) Taken for a public purpose and under due process of law; and
- (iii) Against prompt, adequate and effective compensation.

2. Such compensation shall be equivalent to the market value of the expropriated investment immediately before the date on which the expropriation, nationalisation or comparable measure has become publicly known. The compensation shall be paid without delay and shall carry a rate of return determined on the basis of the market prevailing rate of return until the time of payment; it shall be effectively realisable and freely transferable. Provision shall have been made in an appropriate manner at or prior to the time of expropriation, nationalisation or comparable measure for the determination and payment of such compensation. The legality of any such expropriation, nationalisation or comparable measure and the amount of compensation shall be subject to review by due process of law.

3. Investors of either Contracting Party shall enjoy most-favoured-nation treatment in the territory of the other Contracting Party in respect of the matter provided for in this Article.

Article 6. Transfers

Each Contracting Party shall guarantee to investors of the other Contracting Party, after all taxes and obligations have been met, the free transfer of payments in any freely usable currency in connection with investments and investment returns they hold in the territory of the other Contracting Party, in particular:

- (a) The principal and additional amounts to maintain or increase the investment;
- (b) The returns;
- (c) Repayment of loans;
- (d) The proceeds from the liquidation or the sale of the whole or any part of the investment; and
- (e) The compensation provided for in Articles 4 and 5.

Article 7. Exchange Rates

1. Transfers under Articles 4, 5 and 6 shall be made without delay at the prevailing market rate of exchange.
2. In the absence of market rates, the rate of exchange shall correspond to the cross-rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment for conversions of the currencies concerned into Special Drawing Rights.

Article 8. More Favourable Treatment

If the treatment accorded by either Contracting Party, according to its laws and regulations, to investments or activities in connection with investments made by investors of the other Contracting Party is more favourable than that provided for in this Agreement, the more favourable treatment shall be accorded.

Article 9. Subrogation

If a Contracting Party or any designated agency makes a payment to an investor under a guarantee it has assumed in respect of an investment made by that investor in the territory of the other Contracting Party the latter Contracting Party shall recognise the transfer of any rights or claim from the investor or any of its affiliates to the former Contracting Party or any designated agency.

Article 10. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should as far

possible be settled by the Governments of the two Contracting Parties.

2. If a dispute cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitration tribunal.

3. Such arbitration tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member, and two members shall agree upon a national of a third state as their chairman to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within two (2) months, and such Chairman within three (3) months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.

4. If the periods specified in paragraph 3 above have not been observed, either Contracting Party may, in the absence of any other arrangement, 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 should 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 Court next in seniority who is not a national of either Contracting Party should make the necessary appointments.

5. The arbitration tribunal shall reach its decisions by a majority of votes. Such decisions shall be final and binding. Each Contracting Party shall bear the cost of its own member and the cost of counseling in the arbitration proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitration tribunal may make a different regulation concerning costs. In all other respects, the arbitration tribunal shall determine its own procedures.

Article 11. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Disputes concerning investments between a Contracting Party and an investor of the other Contracting Party, in connection with these investments in the territory of the former Contracting Party, should as far as possible be settled amicably.

2. If the dispute cannot be settled in the way prescribed in paragraph (1) of this Article within six (6) months from the date when the request for the settlement has been submitted, it shall be at the request of the investor filed to the competent court of law of the Contracting party in whose territory the investments was made or filed for arbitration under the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States.

3. If the dispute is submitted in accordance with paragraph (2) to the competent Court of Law of the Contracting Party, the investor cannot at the same time seek international arbitration. If the dispute is filed for arbitration the award shall be binding and shall not be subject to any appeal or remedy other than those provided for the said Convention. The award shall be enforced in accordance with domestic law.

Article 12. Application to Investments

This Agreement shall apply to investments made in the territory of either Contracting Party 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.

Article 13. Amendment

This Agreement may be amended by mutual written consent of both Contracting Parties at any time after it is in force. Any alteration or modification of this Agreement shall be done without prejudice to the rights and obligations arising from this Agreement prior to the date of such alteration or modification until such rights and obligations are fully implemented.

Article 14. 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 at Kuala Lumpur on 28 Rajab 1421 corresponding to 25 October 2000 in the Arabic and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE KINGDOM OF SAUDI ARABIA

KHALID M. ALGOSAIBI

FOR THE GOVERNMENT OF MALAYSIA

RAFIDAH AZIZ

On signing the Agreement between the Government of the Kingdom of Saudi Arabia and the Government of Malaysia concerning the Promotion and Reciprocal Protection of Investments, the undersigned have, in addition , agreed on the following provisions which shall be regarded as an integral part of the said Agreement:

With the respect to Article 3, paragraph (1):

In the case of investments in Malaysia, national treatment shall not be accorded to investment in the banking and insurance sectors.

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

Done at Kuala Lumpur on 28 Rajab 1421 corresponding to 25 October 2000 in the Arabic and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE KINGDOM OF SAUDI ARABIA

KHALID M. ALGOSAIBI

FOR THE GOVERNMENT OF MALAYSIA

RAFIDAH AZIZ