

AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of Malaysia and the Government of the Islamic Republic of Iran (hereinafter referred to as the "Contracting Parties");

Desiring to intensify economic cooperation to the mutual benefit of both States;

Intending to utilise their economic resources and potential facilities in the area of investments as well as to create and maintain favourable conditions for investments of the investors of the Contracting Parties in each other's territory; and

Recognising the need to promote and protect investments of the investors of the Contracting Parties in each other's territory;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement, the meaning of the terms used therein are as follows:

(a) the term "investments" refers to every kind of property or asset, including the following, invested by the investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws, regulations and national policies of the other Contracting Party (hereinafter referred to as the "host Contracting Party"):

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

(ii) shares, stocks and debentures of companies or any property rights in companies;

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

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

(v) rights conferred by law by virtue of permits, licences, or under contract, including rights to search for, extract, or exploit natural resources;

(b) the term "returns" refers to the amounts legally yielded by an investment including profits derived from investments, interests, capital gains, dividends, royalties and fees;

(c) the term "investors" refers to the following persons who invest in the territory of the other Contracting Party within the framework of this Agreement:

(i) with regard to Malaysia:

- natural persons possessing the citizenship of Malaysia in accordance with its laws;

- entities constituted or incorporated under the laws of that Contracting Party and having their seat or headquarters or their real economic activities located in the territory of that Contracting Party;

(ii) with regard to the Islamic Republic of Iran:

- natural persons who in accordance with its laws are considered to be its nationals;

- entities constituted or incorporated under the laws of that Contracting Party and having their seat or headquarters or their

real economic activities located in the territory of that Contracting Party;

(d) "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 Islamic Republic of Iran, areas under the sovereignty or jurisdiction of the Islamic Republic of Iran and includes its maritime areas;

(e) "freely convertible currency" means any currency that is widely used to make payments for international transactions and widely traded in the international principal exchange markets.

2. (a) The term "investments" referred to in paragraph 1(a) shall only refer to all investments that are made in accordance with the laws, regulations and national policies of the Contracting Parties.

(b) Any alteration of the form in which assets are invested shall not affect their classification as investment, provided that such alteration is not contrary to the approval, granted in respect of the initial investment.

Article 2. Promotion of Investments

Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to invest in its territory and, in accordance with its laws, regulations and national policies, shall admit such investments.

Article 3. Protection and Treatment of Investment

1. Investments made by investors of either Contracting Party within the territory of the other Contracting Party, shall receive the host Contracting Party's full legal protection and equitable treatment, and not less favourable than that accorded to investors of any third State.

2. If a Contracting Party has accorded or shall accord in future special advantages or rights to investor(s) of any third State by virtue of an existing or future agreement or arrangement establishing a free trade area, a customs union, a common market or a similar regional organisation or association and/or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accord such advantages or rights to investors of the other Contracting Party.

Article 4. Most Favourable Provisions

Notwithstanding the terms set forth in this Agreement, more favourable provisions, which have been or may be agreed upon by either of the Contracting Parties with an investor of the other Contracting Party are applicable.

Article 5. Expropriation and Compensation

1. Neither Contracting Party shall take any measures of expropriation and nationalisation against the investments of the investors of the other Contracting Party except under its laws or regulations or for public purposes in accordance with due process of law, in a non-discriminatory manner and against payment of prompt, appropriate and effective compensation.

2. Compensation shall amount to the real value of investments immediately before the action of expropriation or nationalisation became public knowledge, and it shall be freely transferable in freely convertible currencies.

3. In case of unreasonable delay in the payment of compensation, it shall include interest from the date of expropriation until the date of actual payment, in accordance with international practice and as agreed upon by the investor and the host Contracting Party.

Article 6. Losses

Investors of either Contracting Party whose investments suffer losses due to any armed conflict, revolution or similar state of emergency in the territory of the other Contracting Party shall be accorded by the other Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement no less favourable than that accorded to investors of any other third country.

Article 7. Transfers

1. Each Contracting Party shall, in accordance with its laws and regulations, permit in good faith the following transfers related to investments referred to in this Agreement, to be made without delay out of its territory:

(a) returns;

(b) proceeds from the sale and/or liquidation of all or part of an investment made by investors of the other Contracting Party;

(c) royalties and fees related to transfer of technology agreement;

(d) sums paid pursuant to Articles 5 and/or 6 of this Agreement;

(e) funds in repayment of loans related to an investment;

(f) monthly salaries and wages received by the employees of an investor who have obtained in the territory of the host Contracting Party, the corresponding work permits related to that investments;

(g) payment arising from a decision of the authority referred to in Article 12.

2. The above transfers shall be effected in a freely convertible currency and at the current rate of exchange in accordance with the exchange regulations prevailing on the date of transfer.

3. The Contracting Parties shall accord to the 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

If a Contracting Party or its designated agency subrogates an investor pursuant to a payment made under an insurance or guarantee agreement against non-commercial risks:

(a) such subrogation shall be recognised by the other Contracting Party;

(b) the subrogee shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise;

(c) dispute between the subrogee and the host Contracting Party shall be settled in accordance with Article 12 of this Agreement.

Article 9. Observance of Commitments

Either Contracting Party shall guarantee the observance of the commitments it has entered into through this Agreement with respect to investments of natural or legal persons of the other Contracting Party.

Article 10. Scope of the Agreement

1. This Agreement shall apply to investments made prior as well as after its entry into force by investors of one Contracting Party in the territory of the other Contracting Party, in accordance with the laws, regulations or national policies of the latter. This Agreement shall only apply to investments that have been approved, if so required by the relevant laws and regulations of the host Contracting Party, by the competent authorities of that Contracting Party.

2. This Agreement shall not apply to disputes which arose before its entry into force.

3. The competent authority in the Islamic Republic of Iran, is the Organisation for Investment, Economic and Technical Assistance of Iran (O.I.E.T.A.I) or any agency which may succeed it.

Article 11. Amendment

This Agreement may be amended by mutual consent of both Contracting Parties at any time after it is in force. The alteration and modification shall not affect the rights and obligations which have already been implemented, or are in the process of implementation, under this Agreement.

Article 12. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. If any dispute arises between the host Contracting Party and an investor of the other Contracting Party with respect to an investment, the parties to the dispute shall primarily endeavor to settle the dispute in an amicable manner through negotiation and consultation.
2. In the event that such disputes cannot thus be settled within six months from the date of notification of the request for amicable settlement, the investor concerned may submit the dispute either to the competent courts or arbitration of the host Contracting Party or to international arbitration.
3. Once the investor has submitted the dispute to the competent tribunal or court of the host Contracting Party or to international arbitration, the election shall be final.
4. Where the dispute is referred to international arbitration, the investor concerned may submit the dispute to:
 - (a) the International Centre for the Settlement of Investment Disputes, established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington D.C. on 18 March 1965, if or as soon both Contracting Parties have acceded to the said Convention, each Contracting Party hereby declares its acceptance of such an arbitral procedures; or
 - (b) an ad hoc arbitral tribunal to be established under the arbitration rules of United Nations Commission on International Trade Law (U.N.C.I.T.R.A.L); or any other international arbitration or ad hoc arbitration tribunal agreed upon between the parties to the disputes.
5. The arbitration awards shall be final and binding on both parties to the dispute.

Article 13. Settlement of Disputes between the Contracting Parties

1. All disputes arising between the Contracting Parties relating to the interpretation or application of this Agreement shall, in the first place, be settled amicably by consultation.
2. If the dispute cannot thus be settled, within six (6) months from the beginning of the consultations, it shall upon request of either Contracting Party, and, with due regard to its laws and regulations, be submitted to an arbitral tribunal, while sending a written notification to the other Contracting Party.
3. In case the dispute is referred to the arbitral tribunal, such tribunal shall be constituted in each individual case as follows: Each Contracting Party shall appoint an arbitrator and these two (2) arbitrators shall select a national of a third State, who, upon approval by the two (2) Contracting Parties, shall be appointed as Chairman. The arbitrators shall be appointed within two (2) months and the Chairman within four (4) months from the date of receipt of the request for arbitration.
4. If, within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, 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 or if he too is a national of either Contracting Party or is otherwise prevented from discharging the said function, the Member of the Court next in seniority who is not a national of either Contracting Party, shall be invited to make the necessary appointments.
5. However, the Chairman of the arbitral tribunal shall be a national of a State having diplomatic relations with both Contracting Parties.
6. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 14. Entry Into Force, Duration and Termination

1. This Agreement shall be approved/ratified by the competent authorities of each Contracting Party.
2. This Agreement shall enter into force for a period of ten years after 30 days from the date of the last notification of either Contracting Party to the other Contracting Party that it has fulfilled necessary measures in accordance with its laws and regulations for the entry into force of this Agreement. After the said period, this Agreement shall remain in force thereafter unless one of the Contracting Parties notifies the other Contracting Party in writing of its intention to terminate it, one (1)

year prior to the expiration or termination thereof.

3. 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 in duplicate at PUTRAJAYA , this 22 JULY 2002, in the English language.

FOR THE GOVERNMENT OF MALAYSIA

FOR THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN

PROTOCOL

On signing the Agreement for the Promotion and Reciprocal Protection of Investments, both Contracting Parties agree to sign the Agreement also in Bahasa Malaysia and Persian, to be exchanged between the Contracting Parties at a later date.

Both Contracting Parties agree that all texts shall be equally authentic and in case of any divergence of interpretation, the English text shall prevail.

Done in duplicate at PUTRAJAYA , this 22 JULY 2002.

FOR THE GOVERNMENT OF MALAYSIA

FOR THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN