

EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF CANADA AND
THE GOVERNMENT OF MALAYSIA CONSTITUTING AN AGREEMENT
RELATING TO CANADIAN INVESTMENTS IN MALAYSIA INSURED
BY THE GOVERNMENT OF CANADA THROUGH ITS AGENT, THE
EXPORT DEVELOPMENT CORPORATION

I

The High Commissioner of Canada to the
Minister of Commerce and Industry of
Malaysia

Kuala Lumpur, July 30, 1971

EXCELLENCY,

I have the honour to refer to discussions which have recently taken place between representatives of our two governments relating to investments in Malaysia which would further the development of economic relations between Malaysia and Canada, and guarantees of such investments by the Government of Canada, through its agent the Export Development Corporation. I also have the honour to confirm the following understandings reached as a result of those discussions:

1. In the event of a payment by the Export Development Corporation under a contract of insurance for any loss by reason of
 - (a) war, riot, insurrection, revolution or rebellion in Malaysia;
 - (b) the arbitrary seizure, expropriation, confiscation or deprivation of use of any property by a government, or agency thereof, in Malaysia;
 - (c) any action by a government, or agency thereof, in Malaysia, other than action of the kind described in paragraph (b) that deprives the investor of any right in, or in connection with, an investment; and

- (d) any action by a government or agency thereof, in Malaysia, that prohibits or restricts transfer of any money or removal of any property from that country;

the Corporation will be recognized by the Government of Malaysia and by the laws of Malaysia as successor to, or subrogated to all the rights of the investor for the purpose of recovering the amount of that loss.

2. In the event that the laws of Malaysia partially or wholly invalidate the acquisition of any interests in any property within its national territory by the Government of Canada, the Government of Malaysia shall permit the investor and the Government of Canada to make appropriate arrangements pursuant to which such interests are transferred to an entity permitted to own such interests under the laws of Malaysia.

3. The Government of Canada shall assert no greater rights than those of the transferring investor under the laws of Malaysia with respect to any interest transferred or succeeded to as contemplated in subparagraph 1. The Government of Canada does, however, reserve its right to assert a claim in its sovereign capacity in the event of a denial of justice or other question of state responsibility as defined in international law.

4. In the event of nationalization or expropriation of industry or business the investor or, in a case where a claim has been paid, the Corporation, will be entitled to fair compensation for properties thus confiscated.

5. Should the Government of Canada acquire, under investment insurance contracts, amounts and credits of the lawful currency of the Government of Malaysia, the said Government of Malaysia shall accord to those funds treatment no different than that which it would accord if such funds were to remain with the investor; and such funds shall be freely available

to the Government of Canada to meet its expenditures in the national territory of Malaysia.

6. Differences between the two Governments concerning the interpretation and application of provisions of this agreement or any claim arising out of investments insured in accordance with this agreement, against either of the two Governments, which in the opinion of the other presents a question of public international law shall be settled, insofar as possible, through negotiations between the Governments. If such differences cannot be resolved within a period of three months following the request for such negotiations, it shall be submitted, at the request of either Governments, to an ad hoc tribunal for settlement in accordance with applicable principles and rules of public international law. The arbitral tribunal shall consist of three members and shall be established as follows: each Government shall appoint one arbitrator; a third member, who shall act as Chairman, shall be appointed by the other two members. The Chairman shall not be a national of either country. The arbitrators shall be appointed within six months and the chairman within nine months of the date of receipt of either Government's request for arbitration. If the foregoing time limits are not met, either Government may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointment or appointments and both Governments agree to accept such appointment or appointments. The Arbitral Tribunal shall decide by majority vote. Its decision shall be binding and definitive. Each of the Governments shall pay the expense of its member and its representation in the proceedings before the Arbitral Tribunal; expenses of the Chairman and the other costs shall be paid in equal parts by the two Governments. The Arbitral Tribunal may adopt other regulations concerning costs. In all other matters, the Arbitral Tribunal shall regulate its own procedures. Only the respective Governments may request arbitral procedure and participate in it.

7. This agreement shall apply only with respect to insured investments in projects or activities approved by the Government of Malaysia.

8. I have the honour to propose that, if the foregoing is acceptable to your Government, this Note, which is authentic in English, French and Bahasa Malaysia, and your reply to that effect shall constitute an agreement between our two Governments which shall enter into force on the date of your reply. This agreement shall continue in force until terminated by either Government on six months' notice in writing to the other. In the event of termination, the provisions of the agreement shall continue to apply, in respect of insurance contracts issued by either Government while the agreement was in force, for the duration of those contracts; provided that in no case shall the agreement continue to apply to such contracts for a period longer than 15 years after termination of this agreement.

9. Accept, Excellency, renewed assurances of my highest consideration.

Sgd.

JOHN G. HADWEN,
High Commissioner for Canada
in Malaysia

II

The Minister of Commerce and Industry of Malaysia
to the High Commissioner of Canada

Kuala Lumpur, 1st October, 1971

YOUR EXCELLENCY,

I have the honour to acknowledge receipt of your letter dated 30th July, 1971 which reads as follows:

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(See Canadian Note of July 30, 1971)

In reply I have the honour to inform you that the Malaysian Government confirms the understandings as set out in your letter and will regard that letter and this reply as constituting an Agreement between the Government of Malaysia and the Government of Canada, the Agreement to enter into force on the date of this reply.

I avail myself of this opportunity to renew to you, Your Excellency, the assurances of my highest consideration.

Yours sincerely,

Sgd.

MOHD. KHIR JOHARI
Minister of Commerce & Industry
Malaysia.

His Excellency,
John G. Hadwen,
High Commissioner for Canada,
in Malaysia.

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STATEMENT BY MENTERI PERDAGANGAN DAN
PERUSAHAAN, ENCHE KHIR JOHARI

Signing of Malaysia/Canada Bilateral Agreement
on Foreign Investment Insurance - 1st. October,
1971 at 10.00 a.m.

First of all may I thank all of you here for being present today to witness the signing of the Agreement between the Government of Malaysia and the Government of Canada on Foreign Investment Insurance.

2. Today's ceremony brings to a successful conclusion a series of negotiations which have taken place between the representatives of the Malaysian Government led by the Secretary General of the Ministry of Commerce and Industry and the representatives of the Canadian Government. This Agreement is made on the basis of an exchange of letters between myself as the Minister of Commerce and Industry and H.E. the Canadian High Commissioner in Malaysia. The letter from H.E. the Canadian High Commissioner was signed on 30th. July, 1971 before his departure to Canada in the presence of the Honourable the Minister of Finance, Tun Tan Siew Sin.

3. The main aim of this Agreement is to ensure fair compensation to Canadian investors in the event of nationalisation or confiscation of property by the Malaysian Government or its agencies. Canadian investments in Malaysia will be insured by the ~~Export Development Corporation of Canada~~ Export Development Corporation of Canada. The Export Development Corporation of Canada will pay a Canadian investor, under an insurance contract, suffering loss caused by nationalisation, expropriation, riot or any other action by the Government or its agencies depriving the rights of the investor of his investment. The Malaysian Government in return recognises the Export Development Corporation of Canada as the sole successor to the claims of the investor.

4. Up-to-date, Canadian investments in the manufacturing sector in this country exceed \$5 million. This is not substantial compared to investments from other countries. However, it is hoped that with the signing of this Agreement, there will be greater confidence on the part of Canadian investors in respect of the investment climate in Malaysia thereby inducing a greater flow of Canadian capital into the country. I believe that

this Agreement will also result in closer economic co-operation and understanding between Malaysia and Canada.

5. The signing of this Agreement in fact confirms further the importance the Malaysian Government attaches to the role of foreign private capital inflow in the industrialisation of the country. Every encouragement is given to the establishment of joint-ventures between foreign and Malaysian capital. In view of this, more joint-venture arrangements between Canadian and Malaysian investors will be welcomed.

6. Malaysia has already similar agreements with the United States of America, the Republic of Germany and recently with the Kingdom of Netherlands.

7. As I have mentioned earlier, Malaysia will always open her doors to foreign investment. We believe in equal treatment of all foreign investments in this country irrespective of their origin. We also believe that all foreign investments should be protected against expropriation or nationalisation without due compensation and due process of law. Although our laws sufficiently protect these rights and interests, we are willing to enter into investment guaranty agreements with any Government in order to offer them greater confidence in the investment climate of Malaysia.

8. With these remarks, I now have great pleasure in signing this Bilateral Agreement on Foreign Investment Insurance between the Government of Malaysia and the Government of Canada.

KEMENTERIAN PERDAGANGAN DAN
PERUSAHAAN.

1st. October, 1971.