

中华人民共和国对外经济贸易部

郑拓彬部长阁下

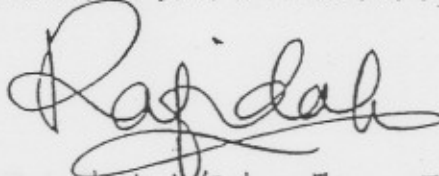
阁下：

参照今日签署的中华人民共和国政府和马来西亚政府关于相互鼓励和保护投资协定第七条，我荣幸地申明，双方的谅解是：中华人民共和国政府一旦成为一九六五年三月十八日在华盛顿开放签字的关于解决国家和他国国民之间投资争端公约（下称“公约”）的成员国时，缔约双方应及时就扩大提交按公约设立的解决投资争端国际中心调解和仲裁的投资争议领域的可能性进行协商。关于协商后缔约双方同意扩大的领域，中华人民共和国给予马来西亚的待遇，在同样情况下，不应低于给予其他国家的待遇。缔约双方同意的新规定应代替第七条。

请确认，上述正确地陈述了双方的谅解。

顺致崇高的敬意。

马来西亚政府贸易和工业部部长



一九八八年十一月 日

马来西亚政府贸易和工业部  
拿汀·巴杜卡·拉菲达部长阁下  
阁下：

我荣幸地收到您于一九八八年十一月二十一日~~的~~来函，内容如下：

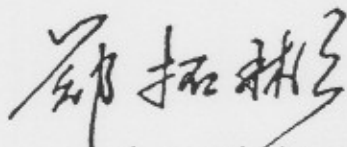
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请确认，上述正确地陈述了双方的谅解。”

我确认双方的上述谅解。

顺致崇高的敬意。

中华人民共和国对外经济贸易部部长



一九八八年十一月二十一日



AGREEMENT  
BETWEEN  
THE GOVERNMENT OF MALAYSIA  
AND  
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA  
CONCERNING  
THE RECIPROCAL ENCOURAGEMENT AND  
PROTECTION OF INVESTMENTS

The Government of Malaysia and the Government of the People's Republic of China (each hereinafter referred to as a "Contracting Party");

Desiring to encourage, protect and create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party based on the principles of mutual respect for sovereignty, equality and mutual benefit and for the purpose of the development of economic co-operation between both States;

Have agreed as follows:

ARTICLE 1  
Definitions

For the purpose of this Agreement:

- (1) The term "investment" means every kind of asset made as investment in accordance with the laws and

regulations of the Contracting Party accepting the investment in its territory and in particular, though not exclusively, includes:

- (i) movable and immovable property and any other property rights such as mortgages, liens or pledges;
- (ii) shares, stocks and debentures of companies or other forms of interest in such companies;
- (iii) a claim to money or to any performance having a financial value;
- (iv) copyrights, industrial property rights, know-how, technical process, trade-names and goodwill; and
- (v) business concessions conferred by law, including concessions to search for, or exploit natural resources.

The said term "investment" shall refer:

- (i) in respect of investments in the territory of Malaysia, to all investments made in projects classified by the appropriate Ministry of Malaysia in accordance with its legislation and administrative practice as an "approved project"; and
- (ii) in respect of investments in the territory of the People's Republic of China, to all



investments approved by the appropriate examination and approval authority of the People's Republic of China in accordance with its legislation and administrative practice.

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 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 profit, interest, capital gains, dividends, royalties and fees.

(3) The term "investor" means:

(a) in respect of Malaysia -

(i) any person who is a citizen of Malaysia according to its Constitution;

(ii) any company with or without limited liability, or any juridical person, association of persons, partnership or sole proprietorship which is incorporated or lawfully constituted in the territory of Malaysia.

(b) in respect of the People's Republic of China -

(i) natural persons who have nationality of the People's Republic of China;

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- (ii) economic entities established in accordance with the laws of the People's Republic of China and domiciled in the territory of the People's Republic of China.

- (4) The term "freely convertible currency" means any currency which is widely used to make payments for international transactions and for which there are ready buyers in the principal markets.

## 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 Provisions

- (1) Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall not be subjected to a treatment less favourable than that accorded to investments made by investors of any third State.
- (2) Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, if any, no less favourable than that which the latter Contracting Party accords to investors of any third State.

ARTICLE 4

Exceptions

The provisions of this Agreement 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 investment, preference or privilege resulting from:

- (i) 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 either of the Contracting Parties is or may become a party; or
- (ii) 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
- (iii) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation; or
- (iv) arrangements concerning frontier trade.

#### ARTICLE 5

#### Expropriation

- (1) Neither Contracting Party shall take any measures of expropriation, nationalization or any dispossession having effect equivalent to nationalization or expropriation against the investments of investors of the other Contracting Party except under the following conditions:
  - (i) the measures are taken for a public purpose and in accordance with the legal procedure of each Contracting Party taking the expropriatory measures;



(ii) the measures are non-discriminatory;

(iii) the measures are accompanied by provisions for payment of fair and reasonable compensation.

(2) Such compensation shall be computed on the basis of the market value of the investment immediately before the expropriation is proclaimed or become publicly known. Where the market value cannot be readily ascertained, the compensation shall be determined in accordance with generally recognized principles of valuation and on equitable principles taking into account, inter alia, the capital invested, depreciation, capital already repatriated, replacement value and other relevant factors. The compensation shall be freely transferable in freely convertible currency and be paid without unreasonable delay.

#### ARTICLE 6

##### Repatriation of Investments

Each Contracting Party shall, subject to its laws and regulations, allow without unreasonable delay the transfer in any freely convertible currency:-

(a) the net profits, dividends, royalties, technical assistance and technical services fees, interest and other current income, accruing from any investment of the investors of the other Contracting Party;

- (b) the proceeds from the total or partial liquidation of any investment made by investors of the other Contracting Party;
  - (c) funds in repayment of loans given by investors of one Contracting Party to the investors of the other Contracting Party which both Contracting Parties have recognised as investment;
  - (d) payments in connection with contracting projects; and
  - (e) the earnings of nationals of the other Contracting Party who are allowed to work in connection with an investment in its territory.
- (2) Such transfer mentioned in paragraph (1) of this Article shall be made:
- (i) in respect of Malaysia, at the exchange rate prevailing at the time of transfer; and
  - (ii) in respect of the People's Republic of China, at the official exchange rate of the People's Republic of China on the date of transfer.
- (3) The Contracting Parties shall undertake to accord the transfer referred to in paragraph (1) of this Article a treatment as favourable as that accorded to the transfer originating from investments made by investors of any third State.

ARTICLE 7

Settlement of Investment Disputes

- (1) If an investor challenges the amount of compensation for the expropriated investment, he may file complaint with the competent authority of the Contracting Party taking the expropriatory measures. If it is not solved within one year after the complaint is filed, the competent court of the Contracting Party taking the expropriatory measures or an International Arbitral Tribunal shall, upon the request of the investor, review the amount of compensation.
- (2) Disputes or differences 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.
- (3) If such disputes or differences cannot be settled according to the provisions of paragraph (2) of this Article within a period of six months from the date either party requested amicable settlement and the parties have not agreed to any other dispute settlement procedures, the investor concerned may choose one or both of the following means of resolutions:
  - (a) file complaint with and seek relief from the competent administrative authority or agency of the Contracting Party in whose territory the investment was made;

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(b) file suit with the competent court of law of the Contracting Party in whose territory the investment was made.

(4) The dispute relating to the amount of compensation and any other disputes agreed upon by both parties may be submitted to an International Arbitral Tribunal.

The International Arbitral Tribunal mentioned above shall be especially constituted in the following way: each party to the dispute shall appoint an arbitrator. The two arbitrators shall appoint an arbitrator as Chairman who shall be a national of a third State which shall have diplomatic relations with both Contracting Parties. The arbitrators shall be appointed within two months and the Chairman within four months from the date when the concerned party notified the other party of its submission of the dispute to arbitration.

If the necessary appointments are not made within the period specified in the previous paragraph, either party may, in the absence of any other agreement, request the Chairman of the International Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments.

The Arbitral Tribunal shall determine its own arbitral procedures by referring either to the Convention on the Settlement of Investment Disputes between States and Nationals of other States done at Washington on March 18, 1965 or the

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Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

The Arbitral Tribunal shall reach its award based upon the provisions of this Agreement, the relevant domestic laws, the agreements both Contracting Parties have concluded and the generally recognised principles of international law.

The Arbitral Tribunal shall meet in a third State selected by common accord by the parties concerned or, if the choice has not been made within forty-five (45) days of the appointment of the final member of the Tribunal, in Stockholm. The Tribunal shall reach its decision by a majority of votes. The award shall be final and binding on both parties.

When the Tribunal renders an award, it shall state its legal basis and, upon request of either party, shall interpret it.

Each party shall bear the costs of the arbitrator it has appointed and of its own expenses during the arbitration proceedings. The expenses of the Chairman of the Tribunal and other costs shall be borne equally by both parties.

- (5) In addition to the foregoing provisions of this Article, disputes between investors of a Contracting Party and the investors of the other Contracting Party in whose territory the investment was made may be settled by international

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arbitration in accordance with the arbitration clause between the Parties.

- (6) 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 to comply with the award rendered by the Arbitral Tribunal.

#### ARTICLE 8

#### Settlement of Disputes Between Contracting Parties

- (1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.
- (2) If a dispute between the Contracting Parties cannot thus be settled within six months, it shall upon the request of either Contracting Party be submitted to an Arbitral Tribunal.
- (3) Such an Arbitral Tribunal shall be constituted for each individual case 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. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall

be appointed Chairman of the Tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

- (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 any 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 shall be invited to 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 International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.
- (5) The Arbitral Tribunal shall determine its own procedure. The Tribunal shall reach its decision in accordance with the provisions of this Agreement and generally accepted principles of international law. The Tribunal shall reach its award by a majority of votes. Such award shall be final and binding on both Contracting Parties. The Tribunal shall, upon the request of either Contracting Party, explain the basis of its award.
- (6) Each Contracting Party shall bear the cost of its appointed arbitrator. The relevant costs of the

Chairman and the Tribunal shall be borne in equal parts by the Contracting Parties.

ARTICLE 9

Subrogation

If a Contracting Party or its Agency makes a payment to an investor under a guarantee it has granted to an investment by its investor in the territory of the other Contracting Party, such other Contracting Party shall recognize the transfer of any right or claim of such investor to the former Contracting Party or its Agency and recognize the subrogation of the former Contracting Party to such right or claim. \*The subrogated right or claim shall not be greater than the original right or claim of the said investor.

ARTICLE 10

Third State Domiciled Investors

If a company which is owned or controlled by an investor of one Contracting Party in a third State has made investments in accordance with the laws and regulations of the other Contracting Party in the territory of the latter, the relevant provisions of this Agreement shall apply to such investments only on the assumption that such third State is not entitled to exercise the right or abandons the right to request for compensation.



ARTICLE 11

More Favourable Treatment

If the treatment to be accorded by one Contracting Party in accordance with its laws and regulations to investments of investors of the other Contracting Party is more favourable than the treatment provided for in this Agreement, the more favourable treatment shall be applicable.

ARTICLE 12

Application to Investment

This Agreement shall apply to investments made in the territory of either Contracting Party in accordance with its legislation or rules or regulations by investors of the other Contracting Party prior to as well as after the entry into force of this Agreement.

ARTICLE 13

Entry Into Force, Duration and Termination

- (1) This Agreement shall enter into force thirty (30) days after the date on which the Contracting Parties have notified each other that their internal requirements for the entry into force of this Agreement have been fulfilled.
- (2) This Agreement shall remain in force for a period of fifteen (15) 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 fifteen (15) year period or any time thereafter.

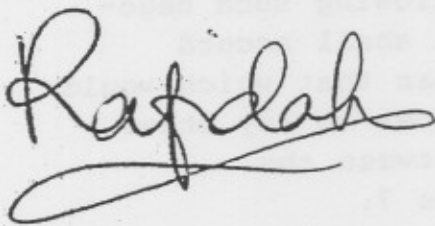
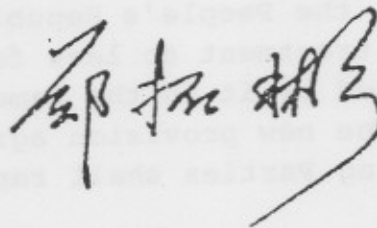
(4) With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of all of the other Articles of this Agreement shall continue to be effective for a period of fifteen (15) years from such date of termination.

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

Done in duplicate at Kuala Lumpur this 21st day of November, 1988 in the Bahasa Malaysia, the Chinese and English Languages, all three texts being equally authentic. In the case of divergence between the texts of this Agreement, the English text shall prevail.

FOR THE GOVERNMENT OF  
MALAYSIA

FOR THE GOVERNMENT OF THE  
PEOPLE'S REPUBLIC OF CHINA

A handwritten signature in black ink, appearing to read 'Rafidah', with a long horizontal flourish extending to the left.A handwritten signature in black ink, consisting of stylized Chinese characters, likely '邵振林' (Shao Zhenlin).

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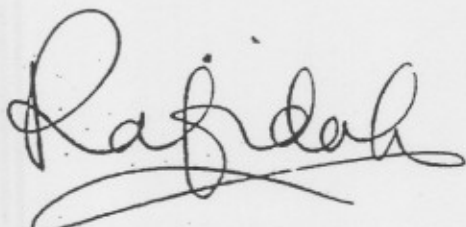
I have the honour to acknowledge receipt of your letter dated 21st November, 1988 which reads as follows:-

"With reference to Article 7 of the Agreement between the Government of Malaysia and the Government of the People's Republic of China concerning the Reciprocal Encouragement and Protection of Investments signed today, I have the honour to state that it is the understanding between the Parties that as soon as the Government of the People's Republic of China becomes a party to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March, 1965 ("the Convention") the Contracting Parties shall promptly enter into negotiations on the possibility to expand the area of investment disputes which may be submitted for conciliation and arbitration by the International Centre For Settlement of Investment Disputes established by the Convention. In relation to the expanded area agreed upon between the Contracting Parties following such negotiations, the People's Republic of China shall accord Malaysia treatment no less favourable than that which would be accorded by it in the same circumstances to any other State. The new provision agreed upon between the Contracting Parties shall replace Article 7.

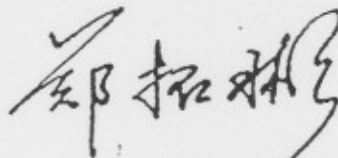
Please let me have your confirmation that the above correctly sets out the understanding between the two Parties."

I confirm the above understanding between the two Parties.

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



Her Excellency,  
Datin Paduka Rafidah Aziz,  
Minister of Trade and Industry,  
Government of Malaysia.



Minister of Foreign Economic  
Relation and Trade,  
People's Republic of China.