

AGREEMENT
ON THE RECIPROCAL PROMOTION AND
PROTECTION OF INVESTMENTS
BETWEEN SPAIN AND MALAYSIA

Spain and Malaysia hereinafter referred to as the "Contracting Parties";

Desiring to expand and deepen economic and industrial cooperation on a long term basis, and in particular, to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising the need to protect investments by investors of both Contracting Parties and to stimulate the flow of investments and individual business initiatives with a view to the economic prosperity of both Contracting Parties;

Have agreed as follow:

ARTICLE I

Definitions

1. The term "investor" means:
 - a) any natural person who is a national of a Contracting Party in accordance with its laws;
 - b) any legal entity, including companies, corporations, partnerships, trusts, joint-ventures, organisations, associations or enterprises incorporated or duly constituted in accordance with applicable laws of that Contracting Party.
2. The term "investment" means any kind of assets and in particular, although not exclusively, the following:
 - a) movable and immovable property and any other property rights such as mortgages, liens and pledges;
 - 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 financial value;
 - d) intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, trade secrets, technical processes, know-how and goodwill;
 - e) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract, or exploit natural resources.
3. The term "returns" refers to the income derived from an investment and in particular, though not exclusively, includes profits, interests, dividends, capital gains, royalties or fees.
4. The term "territory" means the territory over which the Contracting Parties have sovereignty or jurisdiction according to international law and the laws and regulations of the Contracting Parties.

5. "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.
6. The said term "investment" referred to in paragraph 2 shall only refer to all investments that are made in accordance with the laws, regulations and national policies based on and in accordance with the legislation of the Contracting Parties.
7. 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.

ARTICLE II

Promotion and Protection of Investment

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to invest in its territory and shall admit such investments according to its laws and regulations.

2. Investments of investors of either Contracting Party in the territory of the other 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.
3. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investment, treatment which is fair and equitable and not less favourable than that which it accords to investors of any third State.

ARTICLE III

Most-Favoured-Nation Provisions

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall receive treatment which is fair and equitable.
2. This treatment shall not be less favourable than that which is extended by each Contracting Party to the investments made in its territory by investors of a third country.

3. The provisions of this Agreement relative to the granting of treatment no 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 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
 - b) any international agreement or arrangement relating wholly or mainly to taxation.
4. Each Contracting Party may, subject to its own laws, regulations and national policies ~~based on and in accordance with its legislation~~, accord to investments of investors of the other Contracting Party treatment no less favourable than that which is accorded to its own investors.

ARTICLE IV

Compensation for Losses

Investors of one Contracting Party whose investments or returns in the territory of the other Contracting Party suffer losses owing to war, other armed conflicts, a state of national emergency, revolts, insurrection, riots or other similar circumstances in the territory of the latter, shall be accorded, as regards restitution, indemnification, compensation or other settlement, treatment no less favourable than that which the latter Contracting Party grants to investors of any third State. Any payment made under this Article shall be prompt, adequate, effective and freely transferable.

ARTICLE V

Nationalization and 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 an investor of the other Contracting Party except under the following conditions:

- a) the measures are taken for a public or lawful purpose and under 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 to the investor or his legal beneficiary. Such compensation shall amount to the market value of the investments affected immediately before the measure of dispossession became public knowledge and it shall be freely transferable in freely usable currencies from the Contracting Party. Any unreasonable delay in payment shall carry an interest at prevailing commercial rate as agreed upon by both parties unless such rate is prescribed by law.

ARTICLE VI

Transfer

1. Each Contracting Party shall allow the transfer in any freely usable currency of:

- a) the net profits, dividends, royalties, technical assistance and technical fees, interest and other current incomes, 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 borrowings/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) the earnings, salaries, wages and other compensation of investors of the other Contracting Party who are employed and allowed to work in connection with an investment in the territory of the other Contracting Party; and
 - e) indemnities as defined in Articles IV and V.
2. The exchange rates applicable to such transfer in the paragraph 1 of this Article shall be the rate of exchange prevailing at the time of remittance.

3. The Contracting Parties undertake to accord to the transfers referred to in paragraph 1 of this Article a treatment as favourable as that accorded to transfer originating from investments made by investors of any third State.
4. [The Contracting Parties undertake to facilitate the procedures needed to make these transfers without delay] and not later than three (3) months.

ARTICLE VII

Application of Other Rules and Special Commitments

1. Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting Parties are parties, nothing in this Agreement shall prevent either Contracting Party or any of its investors who own investments in the territory of the other Contracting Party from taking advantage of whichever rules are more favourable to his case.
2. 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 of contracts is more favourable than that accorded by this Agreement, the more favourable shall be accorded.

ARTICLE VIII

Settlement of Investment Disputes between A Contracting Party and An Investor of the Other Contracting Party

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of that other Contracting Party shall be subjected to negotiations between the parties in dispute.
2. If the dispute cannot thus be resolved within three (3) months, then if the investor requested, each Contracting Party consents to submit the dispute to:
 - a) the International Centre for the Settlement of Investment Disputes (ICSID) having regard to the applicable provisions of 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, in the event both Contracting Parties shall have become a party to this Convention; or
 - b) an arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. A company which is incorporated or constituted under the law in force in the territory of one Contracting Party in which before such a dispute arises the majority of shares are owned by investors of the other Contracting Party shall in accordance with Article 25(2)(b) of the Convention be treated for the purposes of the Convention as a company of the other Contracting Party.
4. The arbitration decisions shall be final and binding for the parties in conflict. Each Contracting Party undertakes to execute the decisions in accordance with its national law.
5. Both Contracting Parties will respect the independence of the arbitration procedure.

ARTICLE IX

Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation on application of this Agreement should, if possible, be settled through diplomatic channels of the Contracting Parties.

2. If a dispute between the Contracting Parties cannot thus be settled within six (6) 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 (2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman within two (2) 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 reach its decisions 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 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 X

Subrogation

If a Contracting Party or its designated Agency makes a payment to any of its investors under a guarantee it has granted in respect to an investment, the other Contracting Party shall, without prejudice to the rights of the former Contracting Party or its designated Agency under Article VIII, recognise, according to its laws and regulations, the transfer of any right or title of such investor to the former Contracting Party or its designated Agency and the subrogation of that right or title.

ARTICLE XI

Application to Investment

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

ARTICLE XII

Entry in Force, Duration and Termination

1. This Agreement shall enter into force thirty (30) days after the later date on which the Contracting Parties have notified each other that their constitutional requirements and internal procedures for the entry into force of this Agreement have been fulfilled.
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 have signed this Agreement.

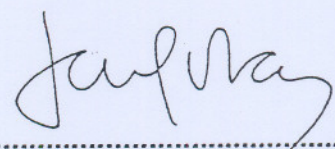
Done in duplicate at Kuala Lumpur, Malaysia this fourth day of April 1995 in Bahasa Malaysia, Spanish and English languages, all texts being equally authentic. In case of any divergence of interpretation the English text shall be taken as reference.

FOR MALAYSIA

FOR SPAIN



RAFIDAH AZIZ
Minister of International Trade
and Industry



JAVIER SOLANA MADARIAGA
Minister of Foreign Affairs