

No. 20547

**SWEDEN
and
MALAYSIA**

Agreement concerning the mutual protection of investments. Signed at Kuala Lumpur on 3 March 1979

Authentic texts: Swedish, Malay and English.

Registered by Sweden on 30 October 1981.

**SUÈDE
et
MALAISIE**

Accord relatif à la protection réciproque des investissements. Signé à Kuala Lumpur le 3 mars 1979

Textes authentiques : suédois, malais et anglais.

Enregistré par la Suède le 30 octobre 1981.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF SWEDEN AND THE GOVERNMENT OF MALAYSIA CONCERNING THE MUTUAL PROTECTION OF INVESTMENTS

The Government of Sweden and the Government of Malaysia,

Desiring to maintain fair and equitable treatment of investments of nationals and companies of one Contracting Party in the territory of the other Contracting Party,

Have agreed as follows:

Article 1. For the purpose of this Agreement:

- 1) The term “investment” shall comprise every kind of asset and more particularly, though not exclusively,
- a) Movable and immovable property as well as any other rights *in rem*, such as mortgage, lien, pledge, usufruct and similar rights;
 - b) Shares or other kinds of interest in companies;
 - c) Title to money or any performance having an economic value;
 - d) Copyrights, industrial property rights, technical processes, trade names and goodwill; and
 - e) Such business-concessions under public law, including concessions regarding the prospecting for, or the extraction or winning of natural resources, as give to their holder a legal position of some duration,

provided that such asset when invested:

- (i) In Malaysia, is invested in a project classified by the appropriate Ministry in Malaysia in accordance with its legislation and administrative practices as an “approved project”. The classification as an “approved project” may, on application, be accorded to investments made prior to the date of the entry into force of this Agreement on conditions to be stipulated for each individual case; and
- (ii) In Sweden, is invested under the relevant laws and regulations either before or after the coming into force of this Agreement.

Any alteration of the form in which the 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 assets originally invested.

2) The term “national” shall mean:

- a) In respect of Sweden, an individual who is a citizen of Sweden according to Swedish law;
- b) In respect of Malaysia, a person who is a citizen according to its Constitution.

¹ Came into force on 6 July 1979, the date on which the two Contracting Parties notified each other that their constitutional requirements had been fulfilled, in accordance with article 8 (1).

3) The term "company" shall mean:

- a) In respect of Sweden, any legal person with its seat in Sweden or with a predominating Swedish interest;
- b) In respect of Malaysia, any company with a limited liability incorporated in the territory of Malaysia or any legal person or any association of persons lawfully constituted in accordance with its legislation.

Article 2. 1. Each Contracting Party shall at all times ensure fair and equitable treatment to the investments of nationals and companies of the other Contracting Party, and such treatment shall not be less favourable than that accorded to investments by nationals or companies of third States.

2. Notwithstanding the provisions of paragraph (1) of this Article, a Contracting Party, which has concluded with one or more other States an agreement regarding the formation of a customs union or a free-trade area, shall be free to grant a more favourable treatment to investments by nationals and companies of the State or States, which are also parties to the said agreement, or by nationals and companies of some of these States. A Contracting Party shall also be free to grant a more favourable treatment to investments by nationals and companies of other States, if this is stipulated under bilateral agreements concluded with such States before the date of the signature of this Agreement.

Article 3. 1. Neither Contracting Party shall take any measures depriving, directly or indirectly, nationals or companies of the other Contracting Party of an investment unless the following conditions are complied with:

- a) The measures are taken in the public interest and under due process of law;
- b) The measures are not discriminatory; and
- c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation, which shall be freely transferable between the territories of the Contracting Parties.

2. The provisions of paragraph (1) shall also apply to the current income from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

Article 4. 1. Each Contracting Party shall, subject to its laws and regulations, allow without undue delay the transfer in any convertible currency of:

- a) The net profits, dividends, royalties, technical assistance and technical service fees, interest and other current income accruing from any investment of the nationals or companies of the other Contracting Party;
- b) The proceeds of the total or partial liquidation of any investment made by nationals or companies of the other Contracting Party;
- c) Funds in repayment of borrowings by nationals or companies of one Contracting Party from the nationals or companies of the other Contracting Party which both Contracting Parties have recognized as investment; and
- d) The earnings of nationals of the other Contracting Party who are allowed to work in connection with an investment in its territory.

2. The Contracting Parties undertake to accord to transfers referred to in paragraph (1) of this Article a treatment as favourable as that accorded to transfers originating from investments made by nationals or companies of any third State.

Article 5. If a Contracting Party makes a payment to any of its nationals or companies 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 under Article 7, recognize the transfer of any right or title of such national or company to the former Contracting Party and the subrogation of the former Contracting Party to any such right or title.

Article 6. In the event of a dispute arising between a national or a company of one Contracting Party and the other Contracting Party in connection with an investment in the territory of that other Contracting Party, it shall upon the agreement by both parties to the dispute be submitted for arbitration to the International Centre for Settlement of Investment Disputes established under the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of other States, dated March 18, 1965.¹

Article 7. 1. If a dispute concerning the interpretation or application of this Agreement is not settled in accordance with the procedure stipulated in Article 6, it shall, if possible, be settled by the Governments of the two Contracting Parties.

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

3. Such arbitral tribunal shall be established in each individual case, each Contracting Party appointing one member, and those two members shall then agree upon a national of a third Party as their Chairman to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within two months, and such Chairman within three months, after either Contracting Party has made known to the other Contracting Party that it wishes the dispute to be submitted to an arbitral tribunal.

4. If the periods specified in paragraph (3) have not been observed, either Contracting Party may, in the absence of any other relevant 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 incapacitated from discharging his function, the Vice-President should be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is incapacitated from discharging his function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party and is not incapacitated should be invited to make the necessary appointments.

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

Article 8. 1. This Agreement shall enter into force on the day the Governments of the two Contracting Parties notify each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled.

2. This Agreement shall remain in force for a period of fifteen years and shall continue in force thereafter unless, after the expiry of the initial period of fourteen

¹ United Nations, *Treaty Series*, vol. 575, p. 159.

years, either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

3. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 7 shall remain in force for a further period of fifteen years from that date.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement.

DONE in Kuala Lumpur this 3rd day of March 1979, in six original copies, two each in Swedish, Bahasa Malaysia and English, all three texts being equally authentic. In the event of a divergence in any of the texts, the English text shall prevail.

For the Government
of Sweden:

[Signed]

KJELL ARNE FÄLTHEIM
Ambassador of Sweden to Malaysia

For the Government
of Malaysia:

[Signed]

Dr. MAHATHIR BIN MOHAMAD
Minister of Trade and Industry