



# **Bilateral Investment Treaty between Netherlands and Malaysia**

**DEZAN SHIRA & ASSOCIATES**

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

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# Agreement on Economic Co-operation between the Kingdom of the Netherlands and Malaysia

## Preamble

The Government of the Kingdom of the Netherlands  
and  
the Government of Malaysia,

Desiring to strengthen their ties of friendship and to foster and promote closer economic relations and to encourage investments on the basis of mutual benefits,

Have agreed as follows:

## Article 1

For the purpose of this Agreement:

- 1) The term 'nationals' shall mean:
  - (a) in respect of Malaysia, a person who is a citizen according to its Constitution; and
  - (b) in respect of the Kingdom of the Netherlands, a person who is a national of the Kingdom of the Netherlands, according to the Netherlands law.
  
- 2) The term 'companies' shall mean:
  - (a) 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 and include partnership; and
  - (b) in respect of the Kingdom of the Netherlands, any legal person constituted in accordance with the Netherlands law, as well as any company as defined in subparagraph (a) of this paragraph, controlled directly or indirectly by a national of the Kingdom of the Netherlands or by a legal person constituted in accordance with the Netherlands law.
  
- 3) 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 to 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 as an 'approved project' under this Agreement, which classification may, on application, also be accorded to a project in which the asset has been invested prior to the date of the entry into force of this Agreement; and
- ii. in the Kingdom of the Netherlands, 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 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.

## Article 2

- 1) The Contracting Parties agree to promote and develop economic co-operation between their respective countries to the greatest possible extent.
- 2) The Contracting Parties further agree to promote co-operation between their nationals and companies and to facilitate within the framework of their respective laws and regulations the participation of their nationals and companies in the establishment of productive and commercial activities and the provision of services in their respective territories which would contribute towards the improvement of the standards of living in their territories and the prosperity of their countries.

## Article 3

- 1) Each Contracting Party is prepared, subject to its laws and regulations, to authorise its

nationals or companies to deliver capital goods to and to carryout public works for governmental and private enterprises in the territory of the other Contracting Party against payment by instalments.

- 2) Each Contracting Party shall authorise in accordance with its laws and regulations, the transfer when due of the sums owing to creditors referred to in clause (1) above who are nationals or companies of the other Contracting Party.

#### Article 4

- 1) The Contracting Parties undertake to promote the development of internationals shipping services.
- 2) Vessels under the flag of either Party, and carrying the papers required by its law in proof of nationality, shall be deemed to be vessels of that Party both on the high seas and within the ports, places and waters of the other Party.
- 3) Merchant vessels of either Party shall have liberty, on equal terms with merchant vessels of the other Party and of any third country, to come with their passengers and cargoes to all ports, places and waters of such other Party open to foreign commerce and navigation. Such vessels shall in all respects be accorded treatment no less favourable than that accorded to like vessels of such other Party and of any third country within the ports, places and waters of such other Party.
- 4) Merchant vessels of either Party shall be accorded treatment no less favourable than that accorded to like vessels of the other Party and of any third country with respect to the right to carry all goods and persons that might be carried by vessels to or from the territory of such other Party; and such goods and persons shall be accorded treatment no less favourable than that accorded to like goods and persons carried in merchant vessels of such other Party with respect to (a) duties and charges of all kinds, (b) the administration of the customs, and (c) bounties, drawbacks and other privileges of this nature.
- 5) The provisions of the preceding paragraphs shall not apply to coastal trade and fisheries. Merchant vessels of either Party may, nevertheless, proceed from one port to another within the territory of the other Party, either for the purpose of landing the whole or part of their passengers or cargoes brought from abroad, or of taking on board the whole or part of their passengers or cargoes for a foreign destination.

## Article 5

- 1) With respect to the payment of taxes, fees or charges and to the enjoyment of fiscal deductions and exemptions each Contracting Party shall accord to nationals and companies of the other Contracting Party, engaged in any economic activity in its territory, no less favourable treatment than that accorded to nationals and companies of any third country.
- 2) Notwithstanding the above provision, each Contracting Party reserves the right to accord special tax advantages on a basis of reciprocity or by virtue of agreement for the avoidance of double taxation or the mutual protection of revenue.

## Article 6

Nationals and companies of either Contracting Party shall, as regards the protection of industrial property, enjoy in the territory of the other Contracting Party protection no less favourable than that enjoyed by nationals and companies of the other Contracting Party.

## Article 7

Subject to its laws and regulations each Contracting Party undertakes to facilitate:

- (a) the holding in its territory by ,the other Contracting Party and its nationals and companies, of economic and commercial exhibitions and displays;
- (b) the importation without payment of customs duties of goods, materials and equipment for purposes of exhibitions and displays referred to in (a) above, provided that such goods, materials and equipment are re-exported within the prescribed period from the date of their importation;
- (c) the sale of goods, materials and equipment referred to in (b) above, provided that all customs duties payable thereon are paid to the Customs Authorities in the territory where they are sold.

## Article 8

- 1) Each Contracting Party shall ensure fair and equitable treatment to the investments of nationals or companies of the other Contracting Party and shall not impair, by unjustified or discriminatory measures, the management, maintenance, use, enjoyment or disposal thereof by those nationals or companies.
- 2) Investments of nationals or companies of one Contracting Party in the country of the other shall not, on the grounds of their ownership or their control being vested directly or indirectly in nationals or companies of the former Contracting Party, be subject to treatment less favourable than the treatment accorded to investments of nationals or companies of the other Contracting Party or the treatment accorded to investments of nationals or companies of any third country.

## Article 9

- 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, interests 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 recognised 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) To the extent that those concerned have not made any other arrangement which is allowed by the appropriate agencies of the Contracting Party in whose territory the investment is situated, transfers under this Article shall be made at the rate of exchange effective for current transactions on the day of the transfer.
- 3) The rate of exchange effective for current transactions shall be based on the par value agreed with the International Monetary Fund and shall lie within the margins above or below such par value allowed under Section 3 of Article IV of the Articles of Agreement of the International Monetary Fund.
- 4) If at the date of the transfer no rate of exchange within the meaning of clause (3)

above exists in respect of the currency of the Contracting Party allowing the transfer, the official rate fixed by such Contracting Party for its currency in relation to the US dollar or to another freely convertible currency or to gold shall be applied. If no such rate has been fixed, the appropriate agencies of the Contracting Party in whose territory the investment is situated shall allow a rate of exchange that is fair and equitable.

## Article 10

The investments of nationals or companies of either Contracting Party in the territory of the other shall not be expropriated except for a public purpose and under due process of law, nor shall they be expropriated in a discriminatory manner. In any case of expropriation there shall be prompt, adequate and effective compensation, which shall represent the fair and equitable value of the investment. The compensation shall be freely transferable in a convertible currency or in the currency of the country of which the claimants are nationals.

## Article 11

If a Contracting Party or its agency makes 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 XV, recognise the transfer of any right or title of such national or company to the former Contracting Party or its agency and the subrogation of the former Contracting Party or its agency to any such right or title.

## Article 12

In the event of any 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 the other Contracting Party, the other Contracting Party shall, after the exhaustion of all local administrative and judicial remedies, agree to such dispute being submitted for conciliation or arbitration to the International Centre for Settlement of Investment Disputes established under the Washington Convention on the Settlement of Investment Disputes of March 18, 1965.

## Article 13

- 1) The Contracting Parties agree to establish a Joint Commission, which will meet at the request of either Contracting Party for the purpose of:
  - (a) discussing any matter pertaining to the implementation of the present Agreement;  
and
  - (b) considering means of promoting economic co-operation between their countries.
- 2) The composition and procedure of the Joint Commission shall be mutually agreed upon by the Contracting Parties.

## Article 14

If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties in addition to this Agreement, result in a position entitling investments by nationals or companies of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such position shall not be affected by this Agreement. Either Contracting Party shall observe any other obligation it may have entered into with regard to investments within its territory by nationals or companies of the other Contracting Party.

## Article 15

- 1) Disputes concerning the interpretation or application of this Agreement should, if possible, be settled by the two Contracting Parties.
- 2) If a 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 these two members shall then agree upon a national of a third country 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 wants the dispute to be submitted to an arbitral tribunal.



- 4) If the arbitral tribunal is not constituted within the period specified in clause (3) above and no extension of the period has been agreed to by both Contracting Parties and in the absence of any other arrangement for the settlement of the dispute, either Party may 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 the said function, the Vice-President should 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 should make the necessary appointments.
- 5) The arbitral tribunal shall base its decision on the provisions of the present Agreement in conformity with the principles of law. This shall however not prejudice the power of the arbitral tribunal to decide the dispute *ex aequo et bono* if necessary in the opinion of the parties. Before the arbitral tribunal gives its decision, it may at any stage of the proceedings propose to the Parties an amicable settlement.
- 6) 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 16

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the territory of the Kingdom in Europe, to Surinam and to the Netherlands Antilles, unless the instrument of ratification of the Kingdom of the Netherlands provides otherwise.

## Article 17

- 1) The present Agreement shall enter into force on the 30th day after the date of the exchange of the instruments of ratification.
- 2) This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, after the expiry of the initial period of ten 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 Article I to XVI shall remain in force for a further period of ten years from that date.
- 4) Subject to the periods mentioned in clause (2) of this Article, the Government of the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of Surinam or the Netherlands Antilles.

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

DONE at [place], on [date], in six original copies, two each in Dutch, Bahasa Malaysia and English language, all texts being equally authentic.

For the Government of  
the Kingdom of the Netherlands,

For the Government of  
Malaysia,