

中华人民共和国政府和马来西亚
政府关于鼓励和相互保护投资
协定(附英文)

辽宁电子图书有限责任公司编

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责任编辑：孟厦

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2003年12月18第1版 2003年12月18第1次印刷

开本:850×1168毫米 1/

字数：60千字

ISBN L-FL-0464/ D92 定价：9.00 元

中华人民共和国政府和马来西亚政府

关于鼓励和相互保护投资协定(附英文)

(缔约双方相互通知已完成各自法律程序, 本协定自一九九零年三月三十一日起生效。)

中华人民共和国政府和马来西亚政府(以下称“缔约方”);

为发展两国间的经济合作, 愿在相互尊重主权和平等互利原则的基础上, 鼓励和保护缔约一方的投资者在缔约另一方领土内的投资, 并为之创造良好的条件, 达成协议如下:

第一条 定义

在本协定内:

一、“投资”一词, 系指根据接受投资缔约一方的法律和法规在其领土内作为投资的各种资产, 主要是:

- (一) 动产和不动产及其他物权, 如抵押权、留置权或质权;
- (二) 公司的股份、股票和债券或在该公司的其他形式的利益;
- (三) 金钱请求权或具有财政价值的行为请求权;
- (四) 版权、工业产权、专有技术、工艺流程、商名和商誉;
- (五) 法律授予的经营特许权, 包括勘探或开发自然资源的特许权。

上述“投资”一词,

在马来西亚领土内的投资, 系指根据马来西亚立法和行政实践, 在由马来西亚适当的部归类为“批准项目”中进行的全部投资;

在中华人民共和国领土内的投资, 系指根据中华人民共和国立法和行政实践, 由中华人民共和国适当的审批机构批准的全部投资。

所投资产形式上的任何变化不应影响其作为投资的性质, 但该变化不得违背对原投入资产的批准。

二、“收益”一词, 系指由投资产生的款项, 主要包括, 但不限于利润、利息、资本利得、股息、提成费和酬金。

三、“投资者”一词,

在马来西亚方面系指:

- (一) 依据马来西亚宪法, 为马来西亚公民的任何人;
- (二) 在马来西亚领土内设立或合法组建的任何有限或无限责任公司或任何法人、社团、合伙或个体业主。

在中华人民共和国方面系指:

- (一) 具有中华人民共和国国籍的自然人;
- (二) 根据中华人民共和国法律设立, 其住所地在中华人民共和国领土内的经济实体。

四、“自由兑换货币”一词, 系指任何广泛使用于国际交易支付的货币, 并且该货币在主要市场上随时有买主。

第二条 促进和保护投资

一、 缔约一方应鼓励缔约另一方的投资者在其领土内投资并为之创造有利条件，并依据其法律赋予的权力接受此种投资。

二、 缔约一方投资者在缔约另一方领土内的投资应始终受到公正和公平的待遇，并享受充分的保护和安全。

第三条 最惠国条款

一、 缔约一方投资者在缔约另一方领土内投资的待遇，不应低于任何第三国投资者的投资所受到的待遇。

二、 缔约一方投资者在缔约另一方领土内的投资，由于该另一方领土内的战争或其他武装冲突、全国紧急状态、叛乱、暴乱或骚乱遭受了损失，假如该缔约另一方采取任何恢复、补偿、赔偿或其他解决办法，所受待遇不应低于给予任何第三国投资者的待遇。

第四条 例外

本协定中有关不低于给予任何第三国投资者待遇的条款不应解释为缔约任何一方有义务因下述情况而产生的投资利益、特惠或特权给予缔约另一方的投资者：

（一）缔约任何一方已经或可能参加的任何现存或将来的关税同盟、自由贸易区、共同对外关税区、货币联盟或类似的国际协议或其他形式的区域合作；

（二）接受旨在合理时间内组成或扩大上述同盟或区域的协议；

（三）主要或全部是关于税收的国际协议或安排，或主要或全部是关于税收的国内立法；

（四）有关边境贸易的安排。

第五条 征收

一、 缔约任何一方都不应对缔约另一方投资者的投资采取任何征收、国有化措施或其效果相当于征收或国有化的任何剥夺措施，除非符合下列条件：

（一）采取该措施是为公共目的并根据采取征收措施缔约一方的法律程序；

（二）该措施是非歧视性的；

（三）该措施伴有公平合理的补偿规定。

二、 补偿应按征收公布或为公众知道前一刻投资的市场价值为基础计算。若市场价值不易确定，补偿应根据公认的估价原则和公平原则确定，尤其应把投入的资本、折旧、已汇回的资本、更新价值和其他有关因素考虑在内。补偿应以可自由兑换货币自由转移，支付不应无故迟延。

第六条 投资的汇回

一、 缔约一方应按其法律和法规，允许以任何可自由兑换的货币转移下列款项，并不得无故迟延：

（一）缔约另一方投资者从其投资中取得的净利润、股息、提成费、技术援助费和技术费、利息和其他经常性收入；

（二）缔约另一方投资者全部或部分清算其投资所得款项；

（三）缔约一方投资者向缔约另一方投资者偿还贷款的款项，该贷款已由缔约双方承认为投资；

（四）与承包项目有关的支付；

（五）缔约另一方国民在缔约一方领土内经允许从事与投资有关工作的收入。

二、 本条第一款所述的转移应按下列汇率进行：

（一）在马来西亚方面，按转移之时通用的汇率。

(二) 在中华人民共和国方面，按转移之日中华人民共和国的官方汇率。

三、 缔约各方承诺给予本条第一款所述转移的待遇，应与第三国投资者产生于投资的转移的待遇相同。

第七条 投资争议的解决

一、 如果投资者对被征收的投资的补偿款额有异议，可向采取征收措施的缔约一方主管部门提出申诉。在申诉提出后一年内仍未解决时，应投资者的请求，由采取征收措施的缔约一方有管辖权的法院或国际仲裁庭对补偿予以审查。

二、 缔约一方与缔约另一方投资者之间关于该投资者在缔约一方领土内有关投资的争议或分歧应尽可能友好解决。

三、 如果该争议或分歧自任何一方要求友好解决之日起六个月内未能按照本条第二款的规定解决，双方又未商定其他解决程序，有关投资者可选择下述一种或两种解决方法：

(一) 向投资所在缔约一方的行政主管部门或机构申诉并寻求救济；

(二) 向投资所在缔约一方有管辖权的法院提起诉讼。

四、 有关补偿款额的争议和双方同意的其他争议，可以提交国际仲裁庭。

上述国际仲裁庭应按下述方式专门设立：争议双方应各委派一名仲裁员。该两名仲裁员应委派一名与缔约双方均有外交关系的第三国国民为仲裁庭主席。从争议一方通知另一方将争议提交仲裁之日起两个月内委派仲裁员，四个月内委派主席。

如果某项委派未在上款规定的期限内作出，又无其它约定，任何一方可以请求斯德哥尔摩商会仲裁院主席进行必要的委派。

仲裁庭应参考一九六五年三月十八日在华盛顿签订的“关于解决国家和他国国民之间投资争端公约”或“联合国国际贸易法委员会仲裁规则”自行制定仲裁程序。

仲裁庭应根据本协定的规定、有关的国内立法、缔约双方间签订的协定和公认的国际法原则作出裁决。

仲裁庭应在有关双方共同选定的第三国工作，如果在仲裁庭最后一名仲裁员被委派后 45 天内未能选定工作地点，则在斯德哥尔摩工作。仲裁庭的裁决以多数票作出。裁决应是终局的，对双方均有拘束力。

仲裁庭作出裁决时，应陈述其法律依据，并应任何一方的要求，对其进行解释。

各方应负担其委派的仲裁员和其参与仲裁程序的费用。仲裁庭主席的费用由双方平均负担。

五、 除本条上述规定外，缔约一方投资者与投资所在缔约另一方投资者之间的争议，可以根据双方订立的仲裁条款通过国际仲裁解决。

六、 在仲裁程序终止之前和缔约一方不遵守或不履行仲裁庭作出的裁决之前，缔约任何一方不得通过外交途径追究已提交仲裁的事宜。

第八条 缔约双方之间争端的解决

一、 缔约双方有关本协定的解释或适用的争端，应尽可能通过外交途径解决。

二、 如在六个月内不能按上述方式解决争端，根据缔约任何一方的要求，应将争端提交仲裁庭。

三、 仲裁庭应按下述方式逐案设立。缔约双方应在收到要求仲裁之日起的两个半月内各委派一名仲裁员。该两名仲裁员应随后推举一名第三国的国民，由缔约双方批准任命为仲裁庭主席。仲裁庭主席应自其他两名仲裁员委派之日起的两个半月内委任。

四、 如果在本条第三款规定的期限内，未作出必要的委派，又无其他约定，缔约任何一方可以

提请国际法院院长作出必要的委派，如国际法院院长是缔约任何一方的国民，或由于其他原因不能履行所述职责，应请副院长进行必要的委派。如副院长是缔约任何一方的国民或也不能履行此项职责，则请国际法院中非缔约任何一方国民的资深法官进行必要的委派。

五、 仲裁庭应自行制定其程序规则。仲裁庭应根据本协定的规定和公认的国际法原则作出裁决，仲裁庭的裁决以多数票作出。裁决是终局的，对缔约双方均有拘束力。应缔约任何一方的请求，仲裁庭应说明其作出裁决的依据。

六、 缔约双方应负担各自委派的仲裁员的费用。仲裁庭主席和仲裁庭的有关费用由缔约双方平均负担。

第九条 代位

如果缔约一方或其代表机构依对其投资者在缔约另一方领土内的某项投资的担保向投资者作了支付，缔约另一方应承认该投资者的任何权利或请求权转让给了该缔约一方或其代表机构，并承认该缔约一方对上述权利或请求权的代位。代位的权利或请求权不得超过该投资者的原有权利或请求权。

第十条 住所位于第三国的投资者

如果为缔约一方投资者拥有或控制的某一第三国公司根据缔约另一方的法律和法规在该缔约另一方领土内进行了投资，只有在该第三国无权或放弃要求补偿的权利时，本协定的有关条款方可适用于此种投资。

第十一条 更优惠待遇

如果缔约一方根据其法律和法规给予缔约另一方投资者投资的待遇较本协定规定的待遇更为优惠，应从优适用。

第十二条 适用的投资

本协定适用于在其生效之前或之后缔约任何一方投资者根据缔约另一方的立法或法规在缔约另一方领土内进行的投资。

第十三条 生效、期限和终止

一、 本协定于缔约双方相互通知各自己完成本协定生效所需的国内程序之日起 30 天后生效。

二、 本协定有效期为 15 年，除非根据本条第三款规定予以终止，本协定应继续有效。

三、 在本协定第一个 15 年有效期满后或此后的任何时间，缔约任何一方可终止本协定，但应提前一年书面通知缔约另一方。

四、 对于本协定终止之日前进行或取得的投资，本协定所有其他条款的规定应自该终止之日起继续有效 15 年。

经各自政府正式授权的签字人签署本协定，以昭信守。

本协定于 1988 年 11 月 21 日在吉隆坡签字。一式两份，每份均用中文、马来文和英文书就，三种文本具有同等效力。如本协定各种文本发生分歧，以英文本为准。

中华人民共和国政府

马来西亚政府

代 表

代 表

郑 拓 彬

拉 菲 达

(签 字)

(签 字)

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 1965 年 3 月 18 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

拉菲达

（签字）

1988 年 11 月 21 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 1988 年 11 月 21 日的来函，内容如下：

“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 1965 年 3 月 18 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。”

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

郑拓彬

（签字）

1988 年 11 月 21 日

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

Whole Doc.

The Government of the People's Republic of China and the Government of Malaysia (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 I 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:

((1)) Movable and immovable property and any other property rights such as mortgages, liens or pledges;

((2)) Shares, stocks and debentures of companies or other forms of interest in such companies;

((3)) A claim to money or to any performance having a financial value;

((4)) Copyrights, industrial property rights, know-how, technical process, trade- names and goodwill; and

((5)) Business concessions conferred by law, including concessions to search for, or exploit natural resources.

The said term "investment" shall refer:

In respect of investments in the territory of Malaysia, to all investments made in those assorted as "the approved items" by the appropriate department of Malaysia in accordance with its legislation and administrative practice.

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; and 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:

In respect of the People's Republic of China-

((1)) Natural persons who have nationality of the People's Republic of China;

((2)) In respect of investments in the territory of Malaysia, to all investment made in projects classified by the appropriate Ministry of Malaysia in accordance with its legislation and administrative practice as an "approved project".

In respect of Malaysia -

((1)) Any person who is a citizen of Malaysia according to its Constitution;

((2)) 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.

(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 II 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 III 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 IV 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:

(1) 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

(2) 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

(3) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation; or

(4) Arrangements concerning frontier trade.

Article V 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:

((1)) The measures are taken for a public purpose and in accordance with the legal procedure of each Contracting Party taking the expropriatory measures;

((2)) The measures are non-discriminatory;

((3)) 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 VI Repatriation of Investments

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

((1)) 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;

((2)) The proceeds from the total or partial liquidation of any investment made by investors of the other Contracting Party;

((3)) 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 recognized as investment;

((4)) Payments in connection with contracting projects; and

((5)) 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:

((1)) In respect of Malaysia, at the exchange rate prevailing at the time of transfer; and
((2)) 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 VII 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 1 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 6 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:

((1)) File complaint with and seek relief from the competent administrative authority or agency of the Contracting Party in whose territory the investment was made;

((2)) 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 2 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 2 months and the Chairman within 4 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 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 recognized 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 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 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 VIII 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 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 2 months of the receipt of the request for arbitration, each Contracting Party shall appoint 1 member of the Tribunal. Those 2 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 2 months from the date of appointment of the other 2 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 IX 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 X 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 XI 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 XII 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 XIII Entry into Force, Duration and Termination

(1) This Agreement shall enter into force 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 15 years, and shall continue in force, unless terminated in accordance with paragraph 3 of this Article.

(3) Either Contracting Party may by giving 1 year's written notice to the other Contracting Party, terminate this Agreement at the end of the initial 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 continue to be effective for a period of 15 years from such date of termination. In witness where of, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Kuala Lumpur this 21st day of November, 1988 in the Chinese, Bahasa Malaysia and English languages, all 3 texts being equally authentic. In the case of divergence between the texts of this Agreement, the English text shall prevail.

For the Government of
the People's Republic
of China

Zheng Tuobin

For the Government of

Malaysia Rafidah

Date: 21st November, 1988

Letter 1

Excellency

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.

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

Rafidah

Minister of Trade and Industry,

Government of Malaysia.

His Excellency,

Mr. Zheng Tuobin,

Minister of Foreign Economic

Relations and Trade,

People's Republic of China.

Date: 21st November, 1988

Letter 2

Excellency

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.

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

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