

**PROTOCOL**  
**AMENDING THE AGREEMENT**  
**BETWEEN**  
**THE GOVERNMENT OF BELGIUM**  
**AND**  
**THE GOVERNMENT OF MALAYSIA**  
**FOR THE AVOIDANCE OF DOUBLE TAXATION**  
**AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME,**  
**SIGNED AT KUALA LUMPUR ON 24 OCTOBER 1973,**  
**AS AMENDED BY THE SUPPLEMENTARY AGREEMENT,**  
**SIGNED AT KUALA LUMPUR ON 25 JULY 1979**

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**THE GOVERNMENT OF BELGIUM**

**AND**

**THE GOVERNMENT OF MALAYSIA**

**DESIRING** to conclude a Protocol to amend the Agreement between the Government of Belgium and the Government of Malaysia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Kuala Lumpur on 24 October 1973, as amended by the Supplementary Agreement, signed at Kuala Lumpur on 25 July 1979 (hereinafter referred to as “the Agreement”),

**HAVE AGREED** as follows:

## Article I

1. Article II of the Agreement is amended

(a) by substituting paragraph 3 with the following:

*“3. The existing taxes to which the Agreement shall apply are:*

*(a) in Malaysia:*

- (i) the income tax; and*
- (ii) the petroleum income tax,*

*(hereinafter referred to as “Malaysian tax”);*

*(b) in Belgium:*

- (i) the individual income tax;*
- (ii) the corporate income tax;*
- (iii) the income tax on legal entities;*
- (iv) the income tax on non-residents;*

*including the prepayments and the surcharges on these taxes and prepayments,*

*(hereinafter referred to as “Belgian tax”).”; and*

(b) by deleting paragraph 6.

## Article II

1. Article III of the Agreement is amended

(a) by substituting sub-paragraph (a) of paragraph 1 with the following:

*“(a) the term “Malaysia” means the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters, and the airspace above such areas, and includes any area extending beyond the limits of the territorial waters of Malaysia, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia and in accordance with international law as an area over which Malaysia has sovereign rights or jurisdiction for the purposes of exploring and exploiting the natural resources, whether living or non-living;”;*

(b) by substituting sub-paragraph (h) of paragraph 1 with the following:

*“(h) the term “competent authority” means in the case of Malaysia and of Belgium, the Minister of Finance or his authorised representative.”*

### **Article III**

Article IV of the Agreement is amended by substituting paragraph 1 with the following paragraph:

*“1. For the purposes of this Agreement, the term “resident of a Contracting State” means:*

- (a) in the case of Belgium, a person who is a resident of Belgium for the purposes of Belgian tax; and*
- (b) in the case of Malaysia, a person who is a resident of Malaysia for the purposes of Malaysian tax.”*

### **Article IV**

Article VII of the Agreement is amended by inserting after paragraph 3 the following paragraph:

*“3A. If the information available to the competent authority of a Contracting State is inadequate to determine the income to be attributed to the permanent establishment of an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person by the making of an estimate by the competent authority, provided that the law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.”*

### **Article V**

Article IX of the Agreement is amended by inserting after paragraph 1 the following paragraph:

*“2. Where a Contracting State includes in the profits of an enterprise of that State --and taxes accordingly-- profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits where that other State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.”*

### **Article VI**

Article X of the Agreement is substituted with the following:

## *“Article X*

1. *Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.*
2. *However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:*
  - (a) *5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;*
  - (b) *10 per cent of the gross amount of the dividends in all other cases.*
3. *Notwithstanding the provisions of paragraph 2, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is:*
  - (a) *a company which is a resident of the other Contracting State and which holds, for an uninterrupted period of at least twelve months, shares representing directly at least 10 per cent of the capital of the company paying the dividends;*
  - (b) *a pension fund that is a resident of the other Contracting State, provided that such dividends are not derived from the carrying on of a business by the pension fund or through an associated enterprise.*

*The term “pension fund” means any person established in a Contracting State that is operated principally to administer or provide retirement benefits, and*

    - (i) *in the case of Belgium, is an entity organized under Belgian law and regulated by the Bank Finance and Insurance Commission; and*
    - (ii) *in the case of Malaysia, is the Employees Provident Fund or any pension or provident fund approved under Malaysian law.*
4. *The provisions of paragraphs 2 and 3 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.*
5. *The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.*
6. *The provisions of paragraphs 1 , 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article VII or Article XIV, as the case may be, shall apply.*

7. *Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State."*

## **Article VII**

Article XI of the Agreement is substituted with the following:

### ***“Article XI***

1. *Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.*
2. *However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.*
3. *Notwithstanding the provisions of paragraph 2:*
  - (a) *interest arising in a Contracting State shall be exempt from tax in that State if it is paid by an enterprise in respect of a loan granted or a credit extended by a resident of the other Contracting State licensed to carry on banking business;*
  - (b) *interest arising in Malaysia shall be exempt from tax in Malaysia if it is paid or credited to:*
    - (i) *the Government of Belgium;*
    - (ii) *any political subdivision or local authority of Belgium;*
    - (iii) *the National Bank of Belgium; and*
    - (iv) *a resident of Belgium where such interest is paid in the framework of a loan or a credit granted by the Association for the coordination of medium-term financing of Belgian export (“Creditexport”) or insured by the National Office of Del Credere or for which a financial support is granted after advice of the Committee for financial support to export (“Finexpo”);*
  - (c) *interest arising in Belgium shall be exempt from tax in Belgium if it is paid or credited to:*
    - (i) *the Government of Malaysia;*
    - (ii) *the Governments of the states;*
    - (iii) *the local authorities;*
    - (iv) *the statutory bodies;*
    - (v) *the Bank Negara Malaysia; and*
    - (vi) *the Export-Import Bank of Malaysia Berhad (EXIM Bank).*

4. *The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. However, the term “interest” shall not include for the purpose of this Article penalty charges for late payment.*
5. *The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article VII or Article XIV, as the case may be, shall apply.*
6. *Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority, a statutory body, or a resident of that Contracting State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.*
7. *Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.”*

### **Article VIII**

Article XII of the Agreement is substituted with the following:

### **“Article XII**

1. *Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.*
2. *However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that Contracting State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 7 percent of the gross amount of the royalties.*

3. *The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience (know-how).*
4. *The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article VII or Article XIV, as the case may be, shall apply.*
5. *Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority, a statutory body or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.*
6. *Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.”*

## **Article IX**

The Agreement is amended by inserting after Article XIII the following:

### **“Article XIII A**

1. *Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.*
2. *However, such fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but where the beneficial owner of the fees for technical services is a resident of the other Contracting State the tax so charged shall not exceed 7 percent of the gross amount of the fees for technical services.*
3. *The term “fees for technical services” as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.*



4. *The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated therein, or performs in that other State independent personnel services from a fixed base situated therein, and the fees for technical services are effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article VII or Article XIV, as the case may be, shall apply.*
5. *Fees for technical services shall be deemed to arise in a Contracting State when such services are performed in that State.*
6. *Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the fees for technical services paid exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.”*

#### **Article X**

Article XVI of the Agreement is substituted with the following:

#### **“Article XVI**

1. *Directors’ fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.*

*This provision shall also apply to payments derived in respect of the discharge of functions which, under the law of the Contracting State of which the company is a resident, are treated as functions of a similar nature as those exercised by a person referred to in the said provision.*

2. *Remuneration derived by a person referred to in paragraph 1 from a company which is a resident of a Contracting State in respect of the discharge of day-to-day functions of a managerial or technical nature shall be taxable in accordance with the provisions of Article XV.*

*Remuneration received by a resident of Malaysia in respect of his day-to-day activity as a partner of a company, other than a company with share capital, which is a resident of Belgium, shall also be taxable in accordance with the provisions of Article XV, as if such remuneration were remuneration derived by an employee in respect of an employment and as if the “employer” were the company.”*

## Article XI

Article XVIII of the Agreement is substituted with the following:

### *“Article XVIII*

1. *Subject to the provisions of paragraph 3 of Article XIX, any pension or annuity paid to a resident of a Contracting State shall be taxable only in that State.*
2. *The term “pension”, as used in paragraph 1, means periodic payments made in consideration of past employment or by way of compensation for injuries received.*
3. *However, pensions and other allowances, periodic or non periodic, paid under the social security legislation of a Contracting State or under a public scheme organised by that State in order to supplement the benefits of its social security legislation may be taxed in that State.*
4. *The term “annuity” means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.”*

## Article XII

Article XIX of the Agreement is substituted with the following:

- “1. (a) *Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority or a statutory body thereof to an individual in respect of services rendered to that State or political subdivision or local authority or statutory body thereof shall be taxable only in that State.*
- (b) *However, such salaries, wages and other similar remuneration, shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:*
  - (i) *is a national of that State, or*
  - (ii) *did not become a resident of that State solely for the purpose of rendering the services.*
- 2 (a) *Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority or a statutory body thereof to any individual in respect of services rendered to that State or political subdivision or local authority or statutory body shall be taxable only in that State.*
- (b) *However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.*

3. *The provisions of Articles XV, XVI, XVII and XVIII shall apply to salaries, wages and other similar remuneration or pensions in respect of services rendered in connection with any business carried on by a Contracting State or a political subdivision or a local authority or a statutory body thereof.”*

### **Article XIII**

Article XX of the Agreement is deleted.

### **Article XIV**

Article XXI of the Agreement is substituted with the following:

*“An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in the other State solely:*

- (a) as a student at a recognised university, college, school or other similar recognised educational institution in that other State;*
- (b) as a business or technical apprentice or trainee; or*
- (c) as a recipient of a grant, allowance or award for the primary purpose of study, research or training from the Government of either State or from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of either State,*

*shall be exempted from tax in that other State on:*

- (i) all remittances from abroad for the purposes of his maintenance, education, study, research or training; and*
- (ii) the amount of such grant, allowance or award.”*

### **Article XV**

Article XXIII of the Agreement is amended by substituting paragraph 3 with the following paragraph:

*“3. In the case of Belgium, double taxation shall be eliminated as follows:*

- (a) Where a resident of Belgium derives income, not being dividends, interest or royalties, which are taxed in Malaysia in accordance with the provisions of this Agreement, Belgium shall exempt such income from tax but may, in calculating the amount of tax on the remaining income of that resident, apply the rate of tax which would have been applicable if such income had not been exempted.*

*Notwithstanding the provisions of this sub-paragraph and any other provision of this Agreement, Belgium shall, for the determination of the additional taxes established by Belgian municipalities and conurbations, take into account the earned income (revenus professionnels – beroepsinkomsten) that is exempted from tax in Belgium in accordance with this sub-paragraph. These additional taxes shall be calculated on the tax which would be payable in Belgium if the earned income in question had been derived from Belgian sources.*

- (b) The exemption provided by sub-paragraph (a) shall also be granted with respect to income treated as dividends under Belgian law, which is derived by a resident of Belgium from a participation in an entity that derives its status as such from the laws of Malaysia, where that entity has not been taxed as such by Malaysia, provided that the resident of Belgium has been taxed by Malaysia, proportionally to his participation in such entity, on the income out of which the income treated as dividends under Belgian law is paid. The exempted income is the income received after deduction of the costs incurred in Belgium or elsewhere in relation to the management of the participation in the entity.*
- (c) Dividends derived by a company which is a resident of Belgium from a company which is a resident of Malaysia, shall be exempted from the corporate income tax in Belgium under the conditions and within the limits provided for in Belgian law.*
- (d) Where a company which is a resident of Belgium derives from a company which is a resident of Malaysia dividends which are not exempted according to sub-paragraph (c), such dividends shall nevertheless be exempted from the corporate income tax in Belgium if the company which is a resident of Malaysia is effectively engaged in the active conduct of a business in Malaysia. In such case, such dividends are exempted under the conditions and within the limits provided for in Belgian law except those related to the fiscal regime applicable to the income out of which the dividends are paid. This provision shall only apply to dividends paid out of profits generated by the said active conduct of a business in Malaysia.*

*A company shall not be considered to be effectively engaged in the active conduct of a business in Malaysia where such company is an investment company, a financing company (other than a bank) or a treasury company or where such company holds any portfolio investment or any copyright, patent, trade mark, design, model, plan, secret formula or process which represent in the aggregate more than a third of its assets and such holding is not part of the active conduct of a business.*

- (e) Subject to the provisions of Belgian law regarding the deduction from Belgian tax of taxes paid abroad, where a resident of Belgium derives items of his aggregate income for Belgian tax purposes which are interest or royalties, the Malaysian tax levied on that income shall be allowed as a credit against Belgian tax relating to such income.*
- (f) Where, in accordance with Belgian law, losses incurred by an enterprise carried on by a resident of Belgium in a permanent establishment situated in Malaysia, have been effectively deducted from the profits of that enterprise for its taxation in Belgium, the exemption provided for in sub-paragraph (a) shall not apply in Belgium to the profits of other taxable periods attributable to that establishment to the extent that those profits have also been exempted from tax in Malaysia by reason of compensation for the said losses.”*

## Article XVI

Article XXIV of the Agreement is amended

- (a) by substituting paragraph 3 with the following:

*“The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on similar activities.”;*

- (b) by inserting after paragraph 5 the following paragraph:

*“6. In this Article, the term “taxation” means taxes to which this Agreement applies.”*

## Article XVII

Article XXV of the Agreement is amended by inserting after paragraph 4 the following paragraph:

*“5. Where*

- (a) *under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Agreement, and*
- (b) *the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within three years from the presentation of the case to the competent authority of the other Contracting State,*

*any unresolved issues arising from the case shall be submitted to arbitration if the competent authorities agree thereon. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States.”*

## Article XVIII

Article XXVI of the Agreement is substituted with the following:

- “1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed by or on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.*

2. *Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.*
  
3. *In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:*
  - (a) *to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;*
  
  - (b) *to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;*
  
  - (c) *to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).*
  
4. *If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.*
  
5. *In no case shall the provisions of paragraph 3 of this Article be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, trust, foundation, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. To the extent necessary to obtain such information the tax administration of the requested Contracting State shall have the power to require the disclosure of information and to conduct investigations and hearings notwithstanding any contrary provisions in its domestic tax laws.”*

## **Article XIX**

Article XXVII of the Agreement is amended by deleting paragraph 2.

## Article XX

Article XXIX of the Agreement is amended with respect to termination in the case of Malaysia as follows:

*“In Malaysia:*

- (i) in respect of Malaysian tax, other than petroleum income tax, to tax chargeable for any year of assessment beginning on or after the first day of January in the calendar year following the year in which the notice is given;*
- (ii) in respect of petroleum income tax, to tax chargeable for any year of assessment beginning on or after the first day of January of the second calendar year following the year in which the notice is given.”*

## Article XXI

The following provisions shall complete the Agreement and shall form an integral part of the Agreement:

### **“PROTOCOL**

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1. *Ad Article III, paragraph 2 of the Agreement:*

*In the interpretation of the provisions of the Agreement which are identical or in substance similar to the provisions of the OECD Model Tax Convention, the tax administrations of the Contracting States shall endeavour to follow the general principles of the Commentaries on the Model Convention provided the Contracting States did not include in those Commentaries any observations expressing a disagreement with those principles and to the extent the Contracting States do not agree on a divergent interpretation in the framework of paragraph 3 of Article XXV.*

2. *Ad Article XI, paragraph 3, sub-paragraph (a) of the Agreement:*

*A resident of Belgium shall be considered licensed to carry on banking business where it is a credit institution supervised by the Banking, Finance and Insurance Commission.*

*A resident of Malaysia shall be considered licensed to carry on banking business where it is licensed or deemed to be licensed under the Banking and Financial Institutions Act 1989, Islamic Banking Act 1983, or any institution prescribed under the Development Financial Institutions Act 2002.*

3. *Ad Article XXIII of the Agreement:*

- (i) *The provisions of sub-paragraph 3(d) of this Article shall apply to dividends paid by companies carrying on offshore business activity and which are exempt from taxation under the Labuan Offshore Business Activity Tax Act 1990 (as amended) only if no income or no item of any income (except dividends) of such companies is derived directly or indirectly from Belgian sources.*
- (ii) *Should the exemption under sub-paragraph 3(d) of this Article be removed or significantly restricted, the Belgian competent authority shall inform the Malaysian competent authority accordingly with a view to the renegotiation of this provision to include a provision to the same effect.”*

**Article XXII**

The Contracting States shall notify each other, by exchange of notes through the diplomatic channel the completion of the procedures required by its domestic law for the bringing into force of this Protocol. This Protocol shall enter into force on the date of the later of the notifications and shall thereupon have effect:

In Malaysia:

- (i) in respect of Malaysian tax, other than petroleum income tax, to tax chargeable for any year of assessment beginning on or after the first day of January in the calendar year following the year in which this Protocol enters into force;
- (ii) in respect of petroleum income tax, to tax chargeable for any year of assessment beginning on or after the first day of January of the second calendar year following the year in which this Protocol enters into force;
- (iii) in respect of any other taxes dealt with in Article XXVI, on any other tax due in respect of taxable events taking place on or after January 1 of the year next following the year in which the Protocol entered into force;

In Belgium:

- (i) in respect to taxes due at source, on income credited or payable on or after January 1 of the year next following the year in which the Protocol entered into force;
- (ii) in respect to other taxes, on income of taxable periods beginning on or after January 1 of the year next following the year in which the Protocol entered into force;
- (iii) in respect of any other taxes dealt with in Article XXVI, on any other tax due in respect of taxable events taking place on or after January 1 of the year next following the year in which the Protocol entered into force.



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

**DONE** in duplicate at Brussels, this 18th day of December 2009, each in the French, Dutch, Malay and the English languages, the four texts being equally authentic. In case of any divergence between the texts, the English text shall prevail.

**FOR THE GOVERNMENT OF BELGIUM:**

**FOR THE GOVERNMENT OF MALAYSIA:**

A handwritten signature in black ink, appearing to be 'D. A. J.', written in a cursive style.A handwritten signature in black ink, appearing to be 'F. B. J.', written in a cursive style.