

**SYNTHESISED TEXT OF THE MLI AND THE AGREEMENT BETWEEN THE  
GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE KINGDOM OF  
BAHRAIN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE  
PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

**General disclaimer on the Synthesised text document**

This document presents the synthesised text for the application of the Agreement between the Government of Malaysia and the Government of the Kingdom of Bahrain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 14 June 1999 as amended by the Protocol signed on 14 October 2010 (the “Agreement”) as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Malaysia on 24 January 2018 and by Bahrain on 27 November 2020 (the “MLI”).

This document was prepared on the basis of the MLI position submitted to the Depository by Malaysia on 18 February 2021 and by Bahrain on 23 February 2022. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Agreement.

The sole purpose of this document is to facilitate the understanding of the application of the MLI to the Agreement and it does not constitute a source of law. The authentic legal texts of the Agreement and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Agreement are included in boxes throughout the text of this document in the context of the relevant provisions of the Agreement.

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Agreement (such as “Covered Tax Agreement” and “Agreement”, “Contracting Jurisdictions” and “Contracting States”), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Agreement or to the Agreement must be understood as referring to the Agreement as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

## References

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (P.U.(A) 224/2020) (provides the authentic legal texts of the MLI).

Agreement between the Government of Malaysia and the Government of the Kingdom of Bahrain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (P.U.(A) 439/1999) (provides, in the case of Malaysia, the authentic legal text of the Agreement).

Protocol Amending the Agreement between the Government of Malaysia and the Government of the Kingdom of Bahrain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (P.U. (A) 162/2011) (provides, in the case of Malaysia, the authentic legal text of the Protocol).

The MLI position of Malaysia submitted to the Depository upon ratification on 18 February 2021 and of the MLI position of Bahrain submitted to the Depository upon ratification on 23 February 2022 can be found on the MLI Depository (OECD) webpage.

## **Disclaimer on the entry into effect of the provisions of the MLI**

The provisions of the MLI applicable to the Agreement do not take effect on the same dates as the original provisions of the Agreement. Each of provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by Malaysia and Bahrain in their MLI positions.

### Entry into force of the MLI:

1 June 2021 for Malaysia and 1 June 2022 for Bahrain.

### Entry into effect of the MLI:

The provisions of the MLI shall have effect to each Contracting State with respect to the Agreement:

- a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2023; and
- b) with respect to all other taxes levied by each Contracting State, for taxes levied with respect to taxable periods beginning on or after 1 December 2022.

**AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE KINGDOM OF BAHRAIN<sup>1</sup> FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

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

~~DESIRING to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,~~

*The following paragraph 1 of Article 6 of the MLI replaces the text referring to an intent to eliminate double taxation in the preamble of this Agreement:*

**ARTICLE 6 OF THE MLI- PURPOSE OF A COVERED TAX AGREEMENT**

Intending to eliminate double taxation with respect to the taxes covered by this Agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions),

have agreed as follows:

Article 1

**PERSONS COVERED**

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2

**TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed by a Contracting State, irrespective of the manner in which they are levied.
2. The existing taxes which are the subject of this Agreement are:
  - (a) in Malaysia:
    - (i) the income tax; and
    - (ii) the petroleum income tax;

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<sup>1</sup> P.U.(A) 162/2011 Art 1

(hereinafter referred to as "Malaysian tax");

(b) in Bahrain:

- (i) the corporate income tax; and
- (ii) any tax imposed on total income or on elements of income;  
(hereinafter referred to as "Bahraini tax").

3. This Agreement shall also apply to any identical or substantially similar taxes on income which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

### Article 3

#### **GENERAL DEFINITIONS**

1. In this Agreement, unless the context otherwise requires:

- (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 includes any area extending beyond the limits of the territorial waters of Malaysia, and the seabed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia as in accordance with international law as an area over which Malaysia has sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non- living;
- (b) the term "Bahrain" means the territory of the Kingdom of Bahrain including its islands, the territorial sea, the continental shelf, any exclusive economic zone or zones, and such other territories, airspace and seas over which Bahrain exercises sovereignty or over which it has rights of sovereignty under international law;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Malaysia or Bahrain as the context requires;
- (d) the term "person" includes an individual, a company and any other body of persons;
- (e) the term "company" means any body corporate or other entity constituted or recognised under the laws of one or other of the Contracting States or which is treated as a body corporate for tax purposes;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident

of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

- (g) the term "tax" means Malaysian tax or Bahraini tax, as the context requires;
- (h) the term "national" means:
  - (aa) in the case of Malaysia:
    - (i) any individual possessing the citizenship of Malaysia; and
    - (ii) any legal person, partnership, association or any other entity deriving its status as such from the laws in force in Malaysia;
  - (bb) in the case of Bahrain:
    - (i) any individual possessing Bahraini nationality under the laws of Bahrain, and
    - (ii) any company, a body of persons or any other entity capable of legal existence under the laws of Bahrain;
- (i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which is situated in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (j) the term "competent authority" means:
  - (i) in the case of Malaysia, the Minister of Finance or his authorised representative; and
  - (ii) in the case of Bahrain, the Minister of Finance and National Economy or his authorized representative.

2. As regards the application of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### Article 4 **RESIDENT**

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

- (a) in the case of Malaysia, a person who is resident in Malaysia for the purposes of Malaysian tax; and
- (b) in the case of Bahrain, the Kingdom of Bahrain<sup>2</sup>, its local authorities, any statutory body thereof and any person who under the laws of the Kingdom of Bahrain<sup>3</sup> is domiciled or resident in, a citizen of, or having their place of incorporation or management within the Kingdom of Bahrain<sup>4</sup>.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has a habitual abode in both States or in neither of them he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

#### Article 5

### **PERMANENT ESTABLISHMENT**

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;

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<sup>2</sup> P.U.(A) 162/2011 Art 1

<sup>3</sup> P.U.(A) 162/2011 Art 1

<sup>4</sup> P.U.(A) 162/2011 Art 1

- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources including timber or other forest produce;
- (g) a farm or plantation;
- (h) a building site or construction, installation or assembly project, which exists for more than six (6) months;
- (i) a place for the exploration for or the production of crude oil or other natural hydrocarbons from the ground or in refining crude oil (where so ever produced).

3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

4. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on supervisory activities in that other State for more than six (6) months in connection with a building site or a construction, installation or assembly project which is being undertaken in that other State.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting on

behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

#### Article 6

#### **INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State shall be taxable in that other State.

2. For the purposes of this Agreement, the term "immovable property" shall be defined in accordance with the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas wells, quarries and other places of extracting of natural resources including timber or other forest produce. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property. 4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

#### Article 7

#### **BUSINESS PROFITS**

1. The profits of an enterprise of a Contracting State shall be taxable only in that

State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only on so much thereof as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses including executive and general administrative expenses, which would be deductible if the permanent establishment were an independent enterprise, insofar as they are reasonably allocable to the permanent establishment, whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 3 shall preclude the State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment shall, however be such that the result will be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## Article 8

### **SHIPPING AND AIR TRANSPORT**

1. (a) Income and profits which an enterprise of Bahrain derives from the operation of aircraft in international traffic, including income and profits incidental to this operation, shall be exempted in Malaysia from the taxes referred to in Article 2 paragraph 2(a).

(b) Income and profits which any enterprise of Malaysia derives from the operation of aircraft in international traffic, including income and profits incidental to this operation, shall be exempted in Bahrain from the taxes referred to in Article 2 paragraph 2(b).

2. Notwithstanding the provisions of Articles 3 paragraph 1(f) of this Agreement:

(a) for purposes of paragraph 1 of this Article the term "enterprise of Bahrain" means an enterprise designated by the Government of Bahrain; and the term "enterprise of Malaysia" means an enterprise designated by the Government of Malaysia; and

(b) the two Governments shall exchange through diplomatic channels lists of designated enterprises, and such lists may be amended through the same procedure.

3. Income and profits from the operation of ships in international traffic may be taxed only in the Contracting State in which the enterprise is situated.

4. The provisions of preceding paragraphs shall also apply to income and profits from participation in a pool, a joint business or an international operating agency.

5. The term "income and profits from operation of aircraft in international traffic and operation of ships in international traffic" shall include the income and profits from:

(a) the alienation, charter or rental of ships or aircraft (as the case may be); and

(b) the alienation or rental of containers or other equipment related to ships or aircraft (as the case may be);

by the enterprise provided that such charter, rental or alienation is incidental to the operation by that enterprise in international traffic.

## Article 9

### **ASSOCIATED ENTERPRISES**

Where

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

*The following paragraph 1 of Article 17 of the MLI applies and supersedes the provisions of this Agreement:*

#### ARTICLE 17 OF THE MLI – CORRESPONDING ADJUSTMENTS

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

#### Article 10

#### **DIVIDENDS**

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State shall 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 recipient is the beneficial owner of the dividends the tax so charged shall not exceed 5 per cent of the gross amount of the dividends.
3. Notwithstanding the provisions of paragraph 2 of this Article, as long as Malaysia does not impose a tax on dividends in addition to the tax chargeable on the profits or income of a company, dividends paid by a company which is a resident of Malaysia to a resident of Bahrain shall be exempt from any tax in Malaysia which may be chargeable on dividends in addition to the tax chargeable on the profits or income of the company. However, where Malaysia imposes a tax on dividends in addition to the tax chargeable on the profits or income of a Company, the rate as prescribed under the provisions of paragraph 2 shall apply.
4. 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 treated as distribution by the taxation laws of the State of which the company making the distribution is a resident.
5. The provisions of paragraphs 1 and 2 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, and the holding in respect of which the

dividends are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

6. Where a company which is a resident of a Contracting State derives income or profits from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of income or profits arising in such other State.

#### Article 11

### **INCOME FROM DEBT-CLAIMS**

1. Income from debt-claims arising in a Contracting State and paid to a resident of the other Contracting State shall be taxed in that other State.

2. However, such income from debt-claims may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the income from debt-claims, the tax so charged shall not exceed 5 per cent of the gross amount of the income.

3. Notwithstanding the provisions of paragraph 2, the Government of a Contracting State shall be exempt from the tax in the other Contracting State in respect of income from debt-claims derived by the Government from that other State.

4. For the purposes of paragraph 3, the term "Government":

(a) in the case of Malaysia means the Government of Malaysia and shall include:

- (i) the governments of the States of Malaysia;
- (ii) the Bank Negara Malaysia;
- (iii) the local authorities;
- (iv) the statutory bodies; and
- (v) the Export-Import Bank of Malaysia Berhad (EXIM Bank);

(b) in the case [of] Bahrain means the Government of the Kingdom of Bahrain<sup>5</sup> and shall include:

- (i) the local authorities;
- (ii) the statutory bodies;
- (iii) the Bahrain Development Bank; and
- (iv) Bahrain Monetary Agency.

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<sup>5</sup> P.U.(A) 162/2011 Art 1

5. The term "income from debt-claims" 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 or debentures.

6. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the income from debt-claims being a resident of a Contracting State, carries on business in the other Contracting State in which the income from debt claims arises, through a permanent establishment situated therein, and the debt claim in respect of which the income is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

7. Income from debt-claims shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying the income from debt-claims, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the income from debt-claims is paid was incurred, and such income is borne by such permanent establishment, then such income shall be deemed to arise in the State in which the permanent establishment is situated.

8. 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 income from debt- claims paid, having regard to the debt-claims 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 12 **ROYALTIES**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 8 per cent 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 cinematography films and works recorded for broadcasting or television, 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 but the term does not include payments in respect of the operation of oil or gas wells, or the extraction of mineral deposits or other natural resources.

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, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying such royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment 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 13

### **FEES FOR TECHNICAL SERVICES**

1. Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State shall 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 10 per cent 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 paragraph 1 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 personal services, and the fees for technical services are effectively connected with such permanent establishment or such services. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a statutory body thereof, or resident of that State. Where, however, the person paying the fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the fees for technical services was incurred, and such fees for technical services are borne by such permanent establishment, then such fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment 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 fees for technical services paid exceeds, for whatever person, 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 14

#### **GAINS FROM THE ALIENATION OF PROPERTY**

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated by an enterprise of a Contracting State in international traffic and movable property pertaining to the operation of such ships or aircraft shall be taxable only in the State of which the enterprise is a resident.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of any property other than that referred to in the above paragraphs shall be taxable in the Contracting State of which the alienator is a resident.

#### Article 15

#### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State. However, in the following circumstances such income may be taxed in the other Contracting State:

- (a) if his stay in the other State is for a period or periods amounting to or exceeding in the aggregate 183 days in the fiscal year concerned; or
- (b) if the remuneration for his services in the other State is either derived from residents of that State or borne by a permanent establishment which a person not resident in that State has in that State and which, in either case exceeds twelve thousand (12,000) US dollars in the calendar year concerned, notwithstanding that his stay in that State is for a period or periods amounting to less than 183 days during that fiscal year.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

#### Article 16

#### **DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 17, 19, 20, 21 and 22, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and

- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed only in that State.

#### Article 17

### **DIRECTORS' FEES**

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

#### Article 18

### **ARTISTES AND SPORTSMEN**

1. Notwithstanding the provisions of Articles 15 and 16 income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits derived from activities exercised in a Contracting State if the visit to that State is directly or indirectly supported wholly or substantially from the public funds of the other Contracting State, a political subdivision, a local authority or a statutory body thereof.

#### Article 19

### **PENSIONS**

Subject to the provisions of paragraph 2 of Article 20, any pension and other similar remuneration for past employment arising in a Contracting State (including pensions and payment under social security legislation) and paid to a resident of the other Contracting State shall be taxable only in that other State.

Article 20

**GOVERNMENT SERVICE**

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 any 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 other State and the recipient is a resident of that other State who:

- (i) is a national of that other State; or
- (ii) did not become a resident of that other State solely for the purpose of performing the services.

2. 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.

3. The provisions of Articles 16, 17 and 19 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 21

**STUDENTS AND TRAINEES**

An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and is 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
- (c) as 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 organization or under a technical assistance programme entered into by the Government of either State, shall be exempt from tax in that other State on:
  - (i) all remittances from abroad for the purposes of his maintenance, education, study, research or training;

- (ii) the amount of such grant, allowance or award; and
- (iii) any remuneration not exceeding four thousand five hundred (4,500) US dollars per annum in respect of services in that other State provided the services are performed in connection with his study, research or training or are necessary for the purposes of his maintenance.

#### Article 22

### **LECTURERS AND RESEARCHERS**

1. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any public university, college, institution primarily for research purposes or other similar public institutions, visits that other State for a period not exceeding three years solely for the purpose of teaching or research or both at such public institution shall be exempt from tax in that other State on any remuneration for such teaching or research.
2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

#### Article 23

### **OTHER INCOME**

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that Contracting State except that if such income is derived from sources in the other Contracting State, it may also be taxed in that other State.

#### Article 24

### **MISCELLANEOUS PROVISIONS**

1. This Agreement shall not affect the right of residents of a Contracting State to benefit from tax and investment incentives, exemptions and allowances (excluding the allowances referred to in paragraph 4 of Article 26) provided for by the other Contracting State in accordance with its domestic laws, regulations and administrative practices.
2. Income derived from engaging in the exploration for or the production of crude oil or other natural hydrocarbons from the ground of Bahrain, or in refining crude oil (wheresoever produced) in Bahrain, shall be taxed in Bahrain pursuant to the Amiri Decree No. 22/1979.

## Article 25

### **ELIMINATION OF DOUBLE TAXATION**

Double taxation shall be eliminated as follows:

1. Subject to the laws of Bahrain where a resident of Bahrain derives income which in accordance with the provisions of this Agreement may be taxed in Malaysia, Bahrain shall allow as a deduction from the tax on income of that person an amount equal to the tax on income paid in Malaysia before the deduction is given, which is attributable to the income which may be taxed in Bahrain.
2. Subject to the laws of Malaysia regarding the allowance as a credit against Malaysian tax in any country other than Malaysia, the Bahrain tax payable under the laws of Bahrain and in accordance with this Agreement by a resident of Malaysia in respect of income derived from Bahrain shall be allowed as a credit against Malaysian tax payable in respect of that income. Where such income is a dividend paid by a company which is a resident of Bahrain to a company which is a resident of Malaysia and which owns not less than 15 per cent of the voting shares of the company paying the dividend, the credit shall take into account the Bahrain tax payable by that company in respect of its income out of which the dividend is paid. The credit shall not, however, exceed that part of the Malaysian tax, as computed before the credit is given, which is attributable to such item of income.
3. For the purposes of paragraph 1, taxes which have been relieved or reduced in Malaysia by virtue of special incentive laws for the promotion of the economic development of Malaysia or any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, those laws or by virtue of the provisions of this Agreement shall be deemed to have been paid and shall wherever applicable be allowed as a credit in Bahrain in an amount equal to the tax which would have been paid if no such relief or reduction had been made.

## Article 26

### **NON-DISCRIMINATION**

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.
2. 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 State than the taxation levied on enterprises of that other State carrying on the same activities.
3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting

State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

4. Nothing in this Article shall be construed as obliging:

(a) a Contracting State to grant to individuals who are resident of the other Contracting State any personal allowances, relief and reductions for tax purposes on account of civil status or family responsibilities which it grants to its own residents;

(b) Malaysia to grant to nationals of Bahrain not resident in Malaysia those personal allowances, relief and reductions for tax purposes which are by law available on the date of signature of this Agreement only to nationals of Malaysia who are not resident in Malaysia.

5. Nothing in this Article shall be construed so as to prevent either Contracting State from limiting to its nationals the enjoyment of tax incentives designed to promote economic development in that State.

6. In this Article, the term "taxation" means taxes to which this Agreement applies.

#### Article 27

#### **MUTUAL AGREEMENT PROCEDURE**

~~1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the taxation laws of those States, present his case to the competent authority of the State of which he is a resident or, if his case comes under paragraph 1 of Article 26, to that of the State of which he is a national.~~

*The following first sentence of paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph 1 of Article 27 of the Agreement:*

#### **ARTICLE 16 OF THE MLI- MUTUAL AGREEMENT PROCEDURE**

Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of the Agreement, that person may, irrespective of the remedies provided by the domestic law of those Contracting States, present the case to the competent authority of either Contracting State.

The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Agreement.

*The following second sentence of paragraph 2 of Article 16 of the MLI applies to this Agreement:*

#### ARTICLE 16 OF THE MLI- MUTUAL AGREEMENT PROCEDURE

Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting State.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purposes of reaching an agreement in the preceding paragraphs.

#### Article 27A

#### **EXCHANGE OF INFORMATION<sup>6</sup>**

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 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 State authorises such use.

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<sup>6</sup> P.U.(A) 162/2011 Article 2

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 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

## Article 28

### **DIPLOMATIC AGENTS AND CONSULAR OFFICERS**

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions, of members of consular officers, or of members of permanent missions to international organisations under the general rules of international law or under the provisions of special agreements.

*The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Agreement:*

#### **ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE** (Principal purposes test provision)

Notwithstanding any provisions of the Agreement, a benefit under the Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Agreement.

## Article 29

### **ENTRY INTO FORCE**

This Agreement shall enter into force on the date on which the Contracting States exchange notes through the diplomatic channels notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Malaysia and Bahrain as the case may be, and thereupon this Agreement shall have effect:

(a) in Malaysia:

- (i) in respect of taxes withheld at source, to income derived on or after the first day of January in the calendar year following the year in which this Agreement enters into force;
- (ii) in respect of the taxes on income, to taxes 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 Agreement enters into force and subsequent years of assessment;

(b) in Bahrain:

- (i) in respect of taxes withheld at source, to income derived on or after the first day of January in the calendar year following the year in which this Agreement enters into force;
- (ii) in respect of other taxes on income, to taxes 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 Agreement enters into force and subsequent years of assessment.

## Article 30

### **TERMINATION**

This Agreement shall remain in effect indefinitely, but either Contracting State may terminate the Agreement, through diplomatic channels, by giving to the other Contracting State written notice of termination on or before June 30th in any calendar year after the period of five years from the date of which this Agreement enters into force. In such an event this Agreement shall cease to have effect:

(a) in Malaysia:

- (i) in respect of taxes withheld at source, to income derived 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 other taxes on income, to taxes 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;

(b) in Bahrain:

- (i) in respect of taxes withheld at source, to income derived on or after the first day of January in the calendar year following the year in which the notice is given;
- (ii) in respect other taxes on income, to taxes 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.

In witness whereof the undersigned, duly authorised thereto, by their respective Governments, have signed this Agreement.

Done in duplicate at Kuala Lumpur this 14th day of June 1999, each in the Malay, Arabic and English languages, the three texts being equally authoritative. In the event of there being a dispute in the interpretation and the application of this Agreement, the English text shall prevail.

FOR THE GOVERNMENT OF  
MALAYSIA

FOR THE GOVERNMENT OF THE  
KINGDOM<sup>7</sup> OF BAHRAIN

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<sup>7</sup> P.U.(A) 162/2011 Art 1