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Our Ref: JPN(S) 152/185/113 Jld.7 (31)  
Date : 3 July 2006

The Secretary of the Tribunal  
Malaysian Historical Salvors Sdn. Bhd. v The Government of Malaysia (ICSID  
Case No. ARB/05/10)  
International Centre for the Settlement of Investment Dispute  
1818 H Street, N.W.  
Washington D.C.  
20433 U.S.A.

Dear Sir,

Re: Malaysian Historical Salvors Sdn. Bhd. v The Government of Malaysia  
(ICSID Case No. ARB/05/10)

The Claimant's letter and Claimant's Post-Jurisdiction Hearing Submission dated 26.6.2006 refer.

2. We would be grateful, if this letter could be brought to the attention of the Sole Arbitrator, Mr. Michael Hwang.

3. We note that from pages 21 to 29 of the Claimant's Post-Jurisdiction Hearing Submission, under the heading "MHS's activities in connection with the Diana project meet all applicable requirements for 'investment' under the UK/Malaysia BIT as well as the ICSID Convention" the Claimant has sought to adduce new facts and/or allegations not previously before the Arbitral Tribunal under the following headings -

- (a) "MHS's investment contributions/commitments/outlays in terms of the Salini/Joy and Lesi-Dipenta Criteria" where reference is made to Kapal Sultan and the subsequent valuation thereunder [see page 24];
- (b) "Research and expertise" [see page 24];
- (c) "Negotiation and Discussions" [See page 25];
- (d) "Searching for the Diana" [See page 25];

- (e) "Salvaging" [See page 25];
- (f) "Project and Relationship Management" [see page 25];
- (g) "Promotion" [see page 25];
- (h) "Pioneering Achievement" [see page 26];
- (i) "Duration and performance of the contract" [see page 26];
- (j) "Participation of Risk" [see page 26];
- (k) "Contribution to the Development of the Host State" [see pages 26 to 28]; and
- (l) "Regularity of profit and return"[see pages 28 to 29].

4. We wish to record our objection to the introduction of these new facts and/or allegations on the following grounds-

- (a) The Claimant has not abided by the directions handed down by the Arbitral Tribunal at the hearing on jurisdiction held on 25.5.2006 which directed that-  

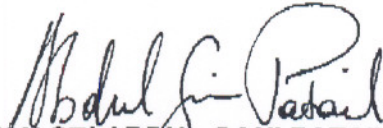
" THE ARBITRATOR: I just want to discuss with you whether or not we need post-hearing briefs as such. I was not intending to ask for it; I think your two rounds of memorials are very full, very clear. There are some new elements added by both sides today, and that is the only issue that I thought maybe you could just help me with by putting on a piece of paper or two the new points that you have raised, and if you think you have developed them adequately in oral submission then all you have to do is give me the references in the transcript."  
[see Transcript of Minutes at page 190 line 8 to 18];
- (b) The Arbitral Tribunal informed the Claimant that for the purpose of the hearing on jurisdiction it would not rely on evidence not accepted by either side [see Transcript of Minutes at page 175 line 14 to 22];
- (c) The Claimant has never adduced these facts and/or allegations in the Claimant's Memorial on Jurisdiction dated 15.3.2006 and the Claimant's Reply Memorial on Jurisdiction dated 23.4.2006 so as to afford the Respondent an opportunity to address them; and

- (d) In any event the Respondent had objected to the presentation made by Mr. Dorian Ball at the hearing on jurisdiction held on 25.5.2006 [see Transcript of Minutes at page 175 line 24 to 25 and page 176 line 1 to 3].

5. Accordingly, the Respondent requests that the Arbitral Tribunal to disregard any reference to the new facts and/or allegations raised by the Claimant in the Claimant's Post Jurisdiction Hearing Submission dated 26.6.2006. Alternatively, directions from the Arbitral Tribunal is sought. An early reply is appreciated.

Thank you.

Yours sincerely,

  
(TAN SRI ABDUL GANI PATAIL)  
Attorney General Malaysia

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