Agreement between the Federal Republic of Germany and Brunei Darussalam concerning the Encouragement and Reciprocal Protection of Foreign Investments

The Federal Republic of Germany and Brunei Darussalam

(hereinafter collectively referred to as the Contracting Parties and each referred to as the Contracting Party),

Desiring to create favourable conditions for greater economic co-operation between them and in particular for investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party,

Recognising that the encouragement and reciprocal protection under international agreements of such investments will be conducive to be stimulation of business initiative and will increase the prosperity in both countries,

Recognising the importance of the transfer of technology and human resources development arising from such investments,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means every kind of asset and in particular, though not exclusively, includes:

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

(b) Shares in and stocks and debentures of a company and any other form of participation in a company as well as securities issued by a Contracting Party;

(c) Claims to money or to any performance under contract associated with any investment having an economic value;

(d) Intellectual property rights, in particular copyrights, patents, utility-model patents, registered designs, trademarks, trade-names, trade and business secrets, technical processes, know how, and goodwill;

(e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

Any alteration to the form in which the assets are invested shall not affect their classification as investments;

2. The term "territory" means the territory of each Contracting Party as well as the maritime area, the continental shelf and the exclusive economic zone of each Contracting Party over which it may exercise sovereign rights or jurisdiction in accordance with international law;

3. The term "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

4. The term "nationals" means:

(a) In respect of Brunei Darussalam:

Natural persons who are afforded the status of a national in Brunei Darussalam under the applicable laws;

(b) In respect of the Federal Republic of Germany:

Germans within the meaning of the Basic Law of the Federal Republic of Germany;

5. The term "companies" means:

(a) In respect of Brunei Darussalam:

Any kind of juridical entity, including any partnership, corporation, body corporate, firm, association or other organisation with or without legal personality that is duly incorporated or constituted within or outside the territory of Brunei Darussalam with limited or unlimited liability irrespective of whether or not their entities are directed to profit and being companies in which nationals of Brunei Darussalam have a substantial or controlling interest;

(b) In respect of the Federal Republic of Germany:

Any juridical person as well as any commercial or other company or association with or without legal personality having its seat in the territory of the Federal Republic of Germany, irrespective of whether or not its activities are directed at profit.

Article 2. Protection of Investment

1. Each Contracting Party shall in its territory promote as far as possible investments by nationals or companies of the other Contracting Party and admit such investments in accordance with its laws and regulations. Each Contracting Party shall at all times ensure fair and equitable treatment to investments made in its territory by nationals and companies of the other Contracting Party.

2. Investments by nationals or companies of each Contracting Party shall at all times enjoy full protection and security in the territory of the other Contracting Party. Returns from the investment and, in the event of their re-investment, the returns therefrom shall enjoy the same protection as the investment. Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use or enjoyment of investments in its territory of nationals or companies of the other Contracting Party.

3. This Agreement shall also apply to investments made prior to its entry into force by nationals or companies of either Contracting Party in the territory of the other Contracting Party consistent with the latter‘s legislation.

Article 3. Most-favoured-nation Provisions

1. Neither Contracting Party shall subject investments in its territory owned or controlled by nationals or companies of the other Contracting Party to treatment less favourable than it accords to investments of its own nationals or companies or to investments of nationals or companies of any third State.

2. Neither Contracting Party shall subject nationals or companies of the other Contracting Party, as regards their activity in connection with investments in its territory, to treatment less favourable than it accords to its own nationals or companies or to nationals or companies of any third State.

3. Such treatment shall not relate to privileges which either Contracting Party accords to nationals or companies of third States on account of its membership of, or association with, a customs or economic union, a common market or a free trade area.

4. The treatment granted under this Article shall not relate to advantages which either Contracting Party accords to nationals or companies of third States by virtue of a double taxation agreement or other agreements regarding matters of taxation.

Article 4. Nationalisation or Expropriation

1. Investments by nationals or companies of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

2. Investments of nationals or companies of either Contracting Party shall neither be expropriated, nationalised nor subjected directly or indirectly to measures having effect equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose and on a non-discriminatory basis and against prompt, adequate and effective compensation.

3. Such compensation shall be computed as equivalent of a fair market value of the investment immediately prior to the point of time when the actual or threatened expropriation has become publicly known. Where the market value cannot be ascertained properly the compensation shall be determined in accordance with internationally recognised accounting principles. The compensation shall include interest at the current LIBOR rate from the date of expropriation until the date of

payment. The amount of compensation shall be subject to review by due process of law. The amount of compensation finally determined shall be paid to the investor in a freely convertible currency, shall be effectively realisable and shall be repatriated in accordance with Article 6.Article 6.

Article 5. Compensation for Damage or Loss

1. Nationals and companies of a Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment not less favourable than that which the latter Contracting Party accords to his nationals and companies or to nationals and companies of any third country whichever is the most favourable as regards restitution, compensation or any other valuable consideration.

2. Without prejudice to Paragraph 1 of this Article, nationals and companies of one Contracting Party who in any of the situations referred to in that Paragraph suffer damages or losses in the territory of the other contracting Party resulting from:

(a) Requisitioning of their property by its forces or authorities, or

(b) Destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation, shall be accorded restitution or fair and adequate compensation.

3. Payments resulting under this Article shall be made in a convertible currency, freely transferable and shall be repatriated in accordance with Article 6.

Article 6. Free Transfer

1. Each Contracting Party shall guarantee to nationals or companies of the other Contracting Party the free transfer of payments in connection with an investment, in particular

(a) Of the initial and additional capital amounts used to maintain, increase or expand investments;

(b) Of the returns;

(c) In the repayment of loans;

(d) Of the proceeds accruing from the total or partial sale or total or partial liquidation of the investment;

(e) Of the compensation provided for in Articles 4 and 5.

2. The transfers shall be made without delay and, in any event, within a period of time not exceeding one month from the date on which the request for the transfer has been made. Transfers shall be effected at the applicable market exchange rate prevailing on the day of the transfer.

3. In the event a market exchange rate does not exist, the rate of exchange shall correspond to the cross rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment for conversions of the currencies concerned into Special Drawing Rights.

Article 7. Subrogation

If either Contracting Party makes a payment to any of its nationals or companies under a guarantee it has assumed in respect of an investment in the territory of the other Contracting Party and if an investment in the territory of one Contracting Party is insured against non-commercial risks under a system established by law and a payment is made by an insurer under an indemnity given in respect of that investment, the Contracting Party in whose territory the investment was made shall, without prejudice to the rights of the former Contracting Party under Article 8, recognise the assignment to the former Contracting Party or the insurer as appropriate, whether under a law or pursuant to a legal transaction, of any right or claim of such national or company of the former Contracting Party. The latter Contracting Party shall also recognise the subrogation of the former Contracting Party or insurer to any such right or claim (assigned claims) which that Contracting Party or insurer shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments made by virtue of such assigned claims, Article 5 and 6 shall apply mutatis mutandis.

Article 8. Settlement of Disputes between Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall as far as possible be settled by the Governments of the two Contracting Parties through diplomatic consultations and negotiations.

2. If a dispute cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitration tribunal.

3. Such arbitration tribunal shall be constituted for each individual case as follows: each Contracting Party shall appoint one member and these two members shall agree upon a national of a third State as their chairman to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within two months, and such chairman shall be appointed within three months from the date on which either Contracting Party has informed the other Contracting Party that it wants to submit the dispute to an arbitration tribunal.

4. If the periods specified in paragraph 3 above have not been observed either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice President shall make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he, too, is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall make the necessary appointments.

5. The arbitration tribunal shall reach its decision by a majority of votes and its decisions shall be binding. Each Contracting Party shall bear the cost of its own member of the arbitration tribunal and the costs of its counsel in the arbitration proceedings, the cost of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The tribunal may decide on any alternative system to share the costs. In all other respects, the arbitration tribunal shall determine its own procedure.

Article 9. Settlement of Investment Disputes

1. Disputes concerning investments between one Contracting Party and a national or company of the other Contracting Party shall, as far as possible, be settled amicably between the parties in dispute.

2. If a dispute cannot be settled within six months of the date when it has been raised by one of the parties in dispute, it shall, upon the request of the national or company of the other Contracting Party or the relevant Contracting Party be submitted for arbitration. Each Contracting Party herewith declares its acceptance of such arbitration procedure. Unless the parties in dispute have agreed otherwise, the provisions of Paragraphs 3 to 5 of Article 8 shall be applied mutatis mutandis on condition that the appointment of the members or the arbitration tribunal in accordance with Paragraph 3 of Article 8 is effected by the parties in dispute and that, insofar as the periods specified in Paragraph 3 of Article 8 are not observed, either party in dispute may, in the absence of other arrangements, invite the President of the International Court of Arbitration of the International Chamber of Commerce in Paris to make the required appointments. The award shall be enforced in accordance with domestic law.

3. During arbitration proceedings or the enforcement of an award, the Contracting Party involved in the dispute shall not raise the objection that the nationals or companies of the other Contracting Party have received compensation under an insurance contract in respect of all or part of its loss.

4. In the event of both Contracting Parties having become Contracting States of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18th March, 1965, disputes under this Article between the parties in dispute shall be submitted for arbitration under the aforementioned convention unless the parties in dispute agree otherwise, each Contracting Party hereby declares its acceptance of such a procedure.

Article 10. Other Obligations

1. If the legislation of either Contracting Party or obligations under bilateral or multilateral agreements, to which the Contracting Parties hereto are parties, existing at present or established hereafter in addition to this Agreement contain a regulation, whether general or specific, entitling investments by nationals or companies of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such regulation shall to the extent that it is more favourable prevail over this Agreement.

2. Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its territory by nationals or companies of the other Contracting Party.

Article 11. Entry Into Force, Duration and Termination

1. This Agreement is subject to ratification. It shall enter into force one month after the date of exchange of the instruments of ratification.

2. This Agreement shall remain in force for a period of ten years and shall continue in force thereafter for an unlimited period unless terminated in writing by either Contracting Party one year before its expiration. After the expiry of the period of ten years this Agreement may be denounced at any time by either Contracting Party giving twelve months' notice.

3. This Agreement shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

4. In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 10 shall continue to be in force for a further period of fifteen years from the date of termination of this Agreement.

5. The Protocol annexed hereto shall form an integral part of this Agreement.

In witness whereof, the plenipotentiaries, being duly authorised thereto, have signed this Agreement.

Done in duplicate at Bonn on this day 30 March of 1998 in the German, Malay and English languages, all three texts being authentic. In case of any divergent interpretation of the German and Malay texts, the English text shall prevail.

For the Federal Republic of Germany Hartmann

For Brunei Darussalam Dato Paduka Hj Yakub bin Abu Bakar

On signing the Agreement between the Federal Republic of Germany and Brunei Darussalam concerning the Encouragement and Reciprocal Protection of Foreign Investments, the undersigned plenipotentiaries have, in addition, agreed on the following provisions which shall form an integral part of the said Agreement:

1. Ad Article 3

(a) Measures undertaken by one Contracting Party in pursuit of its development objectives to stimulate the creation of industries in its territory and applied only to its nationals are not considered to be contrary to the obligations of Article 3, provided they do not substantially impair established and admitted investments of nationals and companies of the other Contracting Party. Measures that have been taken for reasons of public security and order, public health or morality shall not be deemed "treatment less favourable" within the meaning of Article 3.

(b) The following shall more particularly, though not exclusively, be deemed "activity" within the meaning of Article 3(2): the management, main tenance, use and enjoyment of an investment. The following shall, in particular, be deemed „treatment less favourable" within the meaning of Article 3: unequal treatment in the case of restrictions on the purchase of raw or auxiliary materials, of energy or fuel or of means of production or operation of any kind, unequal treatment in the case of impeding the market ing of products inside or outside the country, as well as any other measures having similar effects.

(c) The provisions of Article 3 do not oblige a Contracting Party to extend to natural persons or companies resident in the territory of the other Contracting Party tax privileges, tax exemptions and tax reductions which according to its tax laws are granted only to natural persons and companies resident in its territory.

D) The Contracting Parties shall within the framework of their national legislation give sympathetic consideration to applications for the entry and sojourn of persons of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment; the same shall apply to employed persons of either Contracting Party who in connection with an investment wish to enter the territory of the other Contracting Party and sojourn there to take up employment. Applications for work permits shall also be given sympathetic consideration.

2. Whenever goods or persons connected with an investment are to be transported, each Contracting Party shall neither exclude nor hinder transport enterprises of the other Contracting Party and shall issue permits, in accordance with its laws and regulations, as required to carry out such transport.