THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of Malaysia and the Government of The Democratic People's Republic of Korea hereinafter referred to as the "Contracting Parties;"

Desiring to expand and strengthen economic and industrial cooperation on a long term basis, and in particular, to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing the need to protect investments by investors of both Contracting Parties and to stimulate the flow of investments and individual business initiative with a view to promoting the economic prosperity of both Contracting Parties;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(a) "investments" means every kind of asset and in particular, though not exclusively, includes:

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

(ii) shares, stocks and debentures of companies or interests in the property of such companies;

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

(vi) Intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, tradenames, industrial designs, trade secrets, technical processes and know-how and goodwill;

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

(b) "returns" means the amount yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties or fees;

(c) "investor" means:

(i) any natural person possessing the citizenship of or permanently residing in the territory of a Contracting Party in accordance with its laws; or

(ii) any corporation, partnership, trust, joint-venture, organisation, association or enterprise incorporated or duly constituted in accordance with applicable laws of that Contracting Party;

(d) "territory" means:

(i) with respect to Malaysia, all land territory comprising the Federation of Malaysia, the territorial sea, its bed and subsoil and airspace above;

(ii) with respect to the Democratic People's Republic of Korea, the territorial land, sea and air, maritime and sea-bed subsoil and economic waters within which the Democratic People's Republic of Korea may exercise, in accordance with national and international laws, sovereign and control rights.

(e) "freely usable currency" means the United States dollar, pound sterling, Deutschemark, French franc, Japanese yen or any other currency that is widely used to make payments for international transactions and widely traded in the

international principal exchange markets.

(i) The term "investments' referred to in paragraph 1{a) shall only refer to all investments that are made in accordance with the laws, regulations and national policies of the Contracting Parties.

(ii) Any alteration of the form in which assets are invested shall not affect their classification as investments, provided that such alteration is not contrary to the approval, if any, granted in respect of the assets originally invested.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shail encourage and create favourable conditions for investors of the other Contracting Party to invest capital in its territory and, in accordance with its laws, regulations and national policies, shall admit such investments.

2. Investments of investors of each Contracting Party shall at all times be accorded equitable and equal treatment and shall enjoy full protection and security, in accordance with laws, regulations and national policies in the territory of the other Contracting Party.

Article 3. Most-favoured-nation Provisions

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall receive treatment which is fair and equitable, and not less favourable than that accorded to investments made by investors of any third State.

2. The provisions of this Agreement relative to the granting of treatment not less favourable than that accorded to the investors of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:

(a) any existing or future customs union or free trade area or a common market or a monetary union or similar international agreement or other forms of regional cooperation to which either of the Contracting Parties is or may become a party; or the adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or

(b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 4. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to investors of any third State.

Article 5. Expropriation

Neither Contracting Party shall take any measures of expropriation or nationalization against the investments of an investor of the other Contracting Party except under the following conditions:

(a) the measures are taken for a lawful or public purpose and under due process of law;

(b) the measures are non-discriminatory;

(c) the measures are accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investments affected immediately before the measure of dispossession became public knowledge, and it shall be freely transferable in freely usable currencies from the Contracting Party. Any unreasonable delay in payment of compensation shall carry an interest at prevailing commercial rate as agreed upon by both parties unless such rate is prescribed by law.

Article 6. Transfers

1. Each Contracting Party shall, subject to its laws, regulations and nationa l policies allow without unreasonable delay the

transfer in any freely usable currency:

(a) the net profits, dividends, royalties, technical fees, interest and other current income, accruing from any investment of the investors of the other Contracting Party;

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

(c) funds in repayment of borrowings/loans given by investors of one Contracting Party to the investors of the other Contracting Party which both Contracting Parties have recognised as investment; and

(d) the net earnings and other compensations of national of one Contracting Party who are employed and allowed to work in connection with an investment in the territory of the other Contracting Party.

2. The exchange rates applicable to such transfer in the paragraph 1 of this Article shall be the rate of exchange prevailing at the time of remittance.

3. The Contracting Parties undertake to accord to the transfers referred to in paragraph 1 of this Article a treatment as favourable as that accorded to transfer originating from investments made by investors of any third State.

Article 7. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting party in connection with an investment shall, as far as possible, be settled amicably through consultations between the parties to the dispute.

2. If these consultations do not result in a solution within six months from the date of request for settlement, the investor shall be entitled to submit the case, at his choice, to:

a) the competent court of the Contracting Party in the territory of which the investment has been made;

b) international Centre for Settlement of Investment Disputes established pursuant to the Convention on the Settlement of Investment Disputes between States and nationals of other State opened for signature at Washington D.C. on 18 March 1965 (ACCEDE Convention) in case both Contracting Parties have become parties to this Convention; or

c) an arbitral tribunal which upon agreement of the parties to the dispute, shall be constituted under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. The judicial judgement or arbitration decision rendered shall be final and binding on both parties in the dispute.

4. Neither Contracting Party shall pursue through diplomatic channels or bring an international claim in respect of a dispute which have been submitted for settlement under paragraph (2) above, unless such other Contracting party should fail to abide by or comply with any award rendered in such dispute.

Article 8. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.

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

3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two (2) months from the date of appointment of the other two members.

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

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of sts representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 9. Subrogation

If a Contracting Party or its designated agency makes a payment tc any of its investors under a guarantee it has granted in respect of an investment, the other Contracting Party shall, without prejudice to the righ s of the former Contracting Party under Article 7, recognize the transfer of any right or title of such investors to the former Contracting Party or its designated agency and the subrogation of the former Contracting Party or its designated agency to any right or title.

Article 10. Application to Investments

This Agreement shall apply to investments made in the territory of either Contracting Party in accordance with its laws, regulations or national policies by investors of the other Contracting Party prior to as well as after the entry into force of this Agreement.

Article 11. Amendment

This agreement may be amended by mutual consent of both Contracting Parties at any time after it is in force. Any alteration or modification of this agreement shall be done without prejudice to the rights and obligations arising from this agreement prior to the date of such alteration or modification until such rights and obligations are fully implemented.

Article 12. Entry Into Force, Duration and Termination

1. This Agreement shall be effective for ten (10) years from the date when the governments of the Contracting Parties have notified each other through diplomatic channels the completion of the procedures required by its Saw for bringing this Agreement into force.

2. This Agreement shall continue to be in force for further consecutive periods often (10) years unless either Contracting Party notifies the other in writing of its intention to terminate the Agreement twelve (12) months before the date of its expiry.

3. With respect to investments made prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten (10) years from the date of termination.

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

Done in duplicate at Kuala Lumpur this day 4 of February 1998 in Bahasa

Malaysia, Korean and the English Language, both texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF MALAYSIA

FOR THE GOVERNMENT OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA