TREATY BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF SINGAPORE CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Federal Republic of Germany and the Republic of Singapore,

Desiring to foster and strengthen economic co-operation between the Federal Republic of Germany and the Republic of Singapore,

Intending to create favourable conditions for investment by nationals and companies of either Contracting Party in the territory of the other Contracting Party, and

Recognizing that contractual protection of such investments is apt to stimulate private business initiative and to increase the prosperity of both nations,

Have agreed as follows:

Article 1.

For the purpose of this Treaty:

(1) The term "investment" shall comprise every kind of asset and more particularly though not exclusively:

(a) Movable and immovable property as well as any other rights in rem, such as mortgage, lien, pledge, usufruct and similar rights;

(b) Shares or other kinds of interest in companies,

(c) Title to money or to any performance having an economic value;

(d) Copyright, industrial property rights, technical processes, trade names, and goodwill; and

(e) Such business concessions under public law, including concessions regarding the prospecting for, or the extraction or winning of, natural resources, as give their holder a legal position of some duration.

The said term shall refer:

(i) In respect of investments in the territory of the Federal Republic of Germany, to all investments made in accordance with its legislation, and

(ii) In respect of investments in the territory of the Republic of Singapore, to all investments approved in writing by the Government of the Republic of Singapore irrespective of whether these investments were made before or after the coming into force of the present Treaty.

Any alteration of the form in which assets are invested shall be permitted provided that such alteration is not in conflict with the approval granted in respect of the assets originally invested.

(2) The term "returns" shall mean the amounts derived from an investment as profit or interest for a specific period.

(3) The term "nationals" shall mean:

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

Germans within the meaning of the Basic Law for the Federal Republic of Germany, and

(b) In respect of the Republic of Singapore:

Persons who are citizens of the Republic within the meaning of the Constitution of the Republic of Singapore.

(4) The term "companies" shall mean:

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

Any juridical person as well as any commercial company or other company or association with or without legal personality, having its seat in the territory of the Federal Republic of Germany and lawfully existing consistent with legal provisions irrespective of whether the liability of its partners, associates or members is limited or unlimited and whether or not its activities are directed at profit, and

(b) In respect of the Republic of Singapore:

Any company incorporated in the territory of the Republic of Singapore, or any juridical person or any association of persons lawfully constituted in accordance with its legislation.

Article 2.

(1) Each Contracting Party shall endeavour to admit investments by nationals or companies of the other Contracting Party in accordance with its legislation and administrative practice within the framework of the general economic policy and to promote such investments as far as possible.

(2) Unless otherwise provided by specific stipulations in the document of admission, investments by nationals or companies of either Contracting Party in the territory of the other Contracting Party shall not be subjected to treatment less favourable than that accorded to investments by nationals or companies of the other Contracting Party or investments by nationals or companies of any third State on the ground that ownership, or control directly or indirectly, of them is vested in nationals or companies of the former Contracting Party.

Article 3.

Unless otherwise provided by specific stipulations in the document of admission, neither Contracting Party shall subject in its territory nationals or companies of the other Contracting Party as regards their activities in connection with investments, including the effective management, use or enjoyment of such investments, to treatment less favourable than that accorded to its own nationals or companies or to nationals or companies of any third State as regards their activities in connection with investments.

Article 4.

(1) Investments by nationals or companies of either Contracting Party shall not be expropriated in the territory of the other Contracting Party except for the public benefit and against just and equitable compensation which represents the fair market value of the investment expropriated. Such compensation shall be made without delay and shall be freely transferable. The legality of any such expropriation and the amount of compensation shall be subject to review by due process of law in the territory of the Contracting Party in which the investment has been expropriated.

(2) Nationals or companies of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, or revolt, shall be accorded treatment no less favourable by the other Contracting Party than that other Party accords to its own nationals or companies, as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

(3) Nationals or companies of either Contracting Party shall enjoy most-favoured-nation treatment in the Territory of the other Contracting Party in respect of the matters provided for in the present Article.

(4) The provisions of paragraphs (1) to (3) above shall also apply to returns from investments.

Article 5.

Either Contracting Party shall permit the transfer between the territories of the two Contracting Parties by nationals or companies of the other Contracting Party of the capital in, and returns from, their investments, and, in the event of liquidation, the proceeds from such liquidation.

Article 6.

If either Contracting Party makes 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, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 9, recognize the assignment, whether under a law or pursuant to a legal transaction of any right or claim from such national or company to the former Contracting Party as well as the subrogation of that Contracting Party to any such right or claim, which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payment to be made to the Contracting Party concerned by virtue of such assignment, paragraphs (1) and (2) of Article 4 as well as Article 5 shall apply mutatis mutandis.

Article 7.

(1) To the extent that those concerned have not made any other arrangement admitted by the appropriate agencies of the Contracting Party in whose territory the investment is situated, transfers of funds in pursuance of Articles 4, 5 and 6 of this Treaty made by those concerned shall be approved by the appropriate agencies of the said Contracting Party without undue delay and at the rate of exchange effective for current transactions on the day the transfer is made.

(2) The rate of exchange effective for current transactions shall be based on the par values agreed with the International Monetary Fund and shall lie within the margins above or below such parity admitted under Section 3 of Article IV of the Articles of Agreement of the International Monetary Fund.

(3) If at the date of transfer no rate of exchange within the meaning of paragraph (2) above exists in respect of the Contracting Party concerned, the official rate fixed by such Contracting Party for its currency in relation to the U.S. dollar or to another freely convertible currency or to gold shall be applied. If no such rate has been fixed, the appropriate agencies of the Contracting Party in whose territory the investment has been made shall admit a rate of exchange that is fair and equitable.

Article 8.

If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties in addition to this Treaty, result in a position entitling investments by nationals or companies of the other Contracting Party to treatment more favourable than is provided for by this Treaty, such position shall not be affected by this Treaty. Either Contracting Party shall observe any other obligation it may have entered into with regard to investments within its territory by nationals or companies of the other Contracting Party.

Article 9.

(1) Disputes concerning the interpretation or application of this Treaty should, if possible, be settled by the Governments of the two Contracting Parties.

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

(3) Such arbitral tribunal shall be constituted in each individual case as follows: each Contracting Party shall appoint one member, and these two members shall then 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 within three months, after either Contracting Party has made known to the other Contracting Party that it wants the dispute to be submitted to an arbitral 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 his 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 arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding. Each Contracting Party shall bear the cost of its own member and of its counsel in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal may make a different regulation concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 10.

With the exception of the provisions in paragraph 7 of the Protocol, referring to air transport, the present Treaty shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Republic of Singapore within three months from the entry into force of this Treaty.

Article 11.

(1) This Treaty shall enter into force on the day the Governments of the two Contracting Parties notify each other that their constitutional requirements for the entering into force of this Treaty have been fulfilled.

(2) This Treaty shall remain in force for a minimum period of five years and shall continue in force indefinitely thereafter except if terminated by either Contracting Party upon one year's written notice.

(3) In respect of investments made prior to the date of termination of this Treaty the provisions of Articles 1 to 10 shall continue to be effective for a further period of fifteen years from the date of termination of this Treaty.

DONE at Singapore, this third day of October one thousand nine hundred and seventy-three, in four originals, two each in the English and German languages, all four texts being equally authentic.

For the Federal Republic of Germany:

Dr. Wilhelm Löer

For the Republic of Singapore

Ngiam Tong Dow

At the time of signing the Treaty between the Federal Republic of Germany and the Republic of Singapore concerning the Promotion and Reciprocal Protection of Investments the undersigned plenipotentiaries have, in addition, agreed on the following provisions which are to be regarded as an integral part of the said Treaty:

(1) Ad Article 1:

The term "companies" referred to in paragraph (4) of Article 1 shall not include a branch or branches of any juridical person, company or association which has its seat or is incorporated or constituted in the territory or by or under the law of a third State.

(2) Ad Articles 2 and 3:

The expression "document of admission" referred to in Articles 2 and 3 shall mean a document by which a Contracting Party admits in its territory an investment within the meaning of paragraph (1) of Article 1 to be made by a national or a company of the other Contracting Party. Such "document of admission" shall specify the favours, immunities and conditions which the former Contracting Party grants or imposes in respect of the investment admitted.

The admission of an investment in the territory of either Contracting Party shall not be conditional upon the national or company of the other Contracting Party actually availing himself or itself of that country's incentives for the promotion of investments.

(3) Ad Article 3:

(a) Article 3 shall not apply to entry, sojourn, and activity as an employee.

(b) The following shall more particularly, though not exclusively, be deemed "activity" within the meaning of Article 3: the management, maintenance, use and enjoyment of an investment. The following restrictions shall in particular be deemed to be "treatment less favourable" as referred to in Article 3: restricting the purchase of raw or auxiliary materials, of power or fuel, or of means of production or operation of any kind; impeding the marketing of products inside or outside the country, as well as any other measure having a similar effect. Measures taken for reasons of public order or security or public health or morality shall not be deemed to be "treatment less favourable" within the meaning of Article 3.

(4) Ad Article 4:

The term "expropriation" referred to in paragraph (1) of Article 4 shall also pertain to acts of sovereign power the effects of which are tantamount of expropriation or requisitioning, as well as measures of nationalization.

(5) Ad Article 5:

The term "liquidation" referred to in Article 5 shall be deemed to include any disposal effected for the purpose of completely or partly giving up the investment concerned.

(6) Ad Article 7:

For the purpose of Article 7, paragraph 1, there shall be deemed to be no "undue delay", if approval is given within two months from the date on which the relevant request for transfer of funds was submitted.

(7) Whenever goods or persons connected with the making of investments are to be transported, either Contracting Party shall neither exclude nor hinder transportation enterprises of the other Contracting Party and shall issue permits as required to carry out such transports provided all legal requirements are fully complied with and in respect of air transport, subject to the provisions of any existing bilateral Air Services or other Agreements on transportation between the two Contracting Parties for the time being in force. This includes the transportation of

(a) Goods directly intended for an investment within the meaning of the present Treaty or acquired in the territory of either Contracting Party or of any third State by or on behalf of an enterprise in which assets within the meaning of the present Treaty are invested;

(b) Persons travelling in connection with the making of investments.

(8) Without prejudice to any other method of determining nationality, any person shall be deemed to be a national of a Contracting Party who is in possession of a national passport issued by the appropriate authorities of the Contracting Party concerned.

DONE at Singapore, this third day of October one thousand nine hundred and seventy-three, in four originals, two each in the English and German languages, all four texts being equally authentic.

For the Federal Republic of Germany:

Dr. Wilhelm Löer

For the Republic of Singapore

Ngiam Tong Dow