AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF ROMANIA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of Malaysia and the Government of Romania, hereinafter referred to as the Contracting Parties;

Desiring to expand and deepen economic and industrial co-operation on a long term basis and in particular, to create favourable conditions for mvestments by investors of one Contracting Party in the territory of the State of the other Contracting Party,

Recognising 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 fostering the economic prosperity of both Contracting Parties,

Have agreed as follows:

Article 1. Definitions

1. 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 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 financial value.

(iv) intellectual property rights, including rights with respect lo copy-rights, patents, trademarks tradenames, industrial designs, technical processes, as well as know-how or 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 profit, interest, capital gains, dividends, royalties or fees;

(c) "investor" means:

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

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

(d) "territory" means:

(i) with respect to Romania, the territory of Romania including the territorial sea, as well as the exclusive economic zone over which Romania exercises, in accordance with internal and international law, sovereignty, sovereign rights or jurisdiction; and

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

(e) "freely usable currency" means the United States dollar, pound sterling, Deutsehemark, 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.

2. (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 guidelines issued by each Contracting Party.

(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 shall 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 guidelines, shall admit such investments.

2. Investments of investors of each Contracting Party shall at all times be accorded equitable treatment and shall enjoy full adequate protection and security 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. Investors of one Contracting Party whose investments in the territory or 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, not less favourable than that which the latter Contracting Party accords to investors of any third State.

3. 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 Contracting Party 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 co-operation to which either of the Contracting Parties is or may become a party, 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. Expropriation

Each Contracting Party shall not take any measures of expropriation, nationalisation or any other dispossession, having effect equivalent to expropriation or nationalisation against the investments of an investor of the other Contracting Party except under the following conditions

(a) the measures are taken for a lawful purpose 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 fair market value immediately before the measure of dispossession became public knowledge. Such market value shall be determined in accordance with internationally acknowledged practices and methods or, where such fair market value cannot be determined, it shall be such reasonable amount as may be mutually agreed between the Contracting Party and the investor of the other Contracting Party and it shall be freely transferable in freely usable currencies. Any unreasonable delay in payment of compensation shall carry an interest at prevailing commercial rate as agreed upon by both parties unless such rare is prescribed by law.

Article 5. Repatriation with Respect to Investments

1. Each Contracting Party shall, subject to its laws, regulations and guidelines, in respect to investments by investors of the other Contracting Party, allow without unreasonable delay the transfer of :

(a) the net profits, dividends, royalties, technical assistance and 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 given by investors of one Contracting Party to the investors or the other Contracting Party which both Contracting Parties have recognised as investment; and

(d) the earnings and other compensation of investors of the other Contracting Party who are employed and allowed to work in connection with an investment in the territory of the other Contracting Party.

2. To the extent that the investor of either Contracting Party has not made another arrangement with the appropriate authorities of the other Contracting Party in whose territory the investment is situated, currency transfer made pursuant to paragraph 1 of this Article shall be permitted in the currency of the original investments or any other freely usable currency.

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

4. 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 the transfer originating from investments made by investors of any third State.

Article 6. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any disputes arising between a Contracting Party and an investor of the other Contracting Party which involve:

(i) an obligation entered into by that Contracting Pary with the investor of the other Contracting Party regarding an investment by such investor; or

(ii) an alleged breach of any right conferred or created by this Agreement with respect to an investment by such investor,

shall be resolved amicably, through consultation and negotiation.

2. In the event that such a dispute cannot be settled amicably within six (6) months from the date of the written notification of such dispute, the investor may refer the dispute either to:

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

(b) the International Centre for Settlement of Investment Disputes (ICSID) provided for by the Convention on the Settlement of Investment Disputes between States end Nationals of other States, opened for signature at Washington D.C. on 18 March 1965; or

(c) an ad-hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. Each Contracting Party hereby consents to the submission of an investment dispute to international conciliation or arbitration.

4. The Contracting Party which is a party to the dispute shall at no time whatsoever during the procedures involving investment disputes, assert as a defence its immunity or the fact that the investor has received compensation under an insurance contract covering the whole or part of the incurred damage or loss.

Article 7. 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 within six months, 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 citizen 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 months from the date of appointment of the other two members.

4. If within the periods specified in paragraph 2 of this Article the necessary appointments have not been made, either

Contracting Party may an the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a citizen 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 citizen 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 citizen 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 its 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 shall determine its own procedure

Article 8. Subrogation

If a Contracting Party makes a payment to any of its investors under a guarantee it has granted in respect to an investment, the other Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 6, recognise the transfer of any right or title of such investor to the former Contracting Party, and the subrogation or the former Contracting Party to any right or title.

Article 9. Application to Investments

This Agreement shall apply to investments made in the territory of either Contracting Party in accordance with its legislation, regulations or guidelines by investors of the other Contracting Party prior to, as well as after the entry into force of this Agreement. However, the Agreement shall not apply to disputes that have arisen before its entry into force.

Article 10. Application of other Provisions

1. If the legislation of either Contracting Parry entitles investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such legislation 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 investors of the other Contracting Party.

Article 11. Consultation and Amendment

1. Each Contracting Party may request that a consultation be held on any matter that both Contracting Parties agree to discuss.

2. This Agreement may be amended at any time, if it is deemed necessary, by mutual consent.

Article 12. Final Provisions

1. This Agreement shall enter into force thirty (30) days after the later date on which the Contracting Parties have notified each other that their requirement for the entry into force of this Agreement, have been fulfilled. The later date shall refer to the date on which the last notification letter is sent.

2. This Agreement shall remain in force for a period of ten (10) years and shall continue to be in force, unless terminated in accordance with paragraph 3 of this Article.

3. Either Contracting Party may, by giving six (6) months written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten (10) year period or anytime thereafter.

4. With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of all of the other Articles of this Agreement shall continue to be effective for a period of ten (10) years from such date of termination.

5. Upon the coming into force of this Agreement, the Agreement between the Government of Malaysia and the Government of the Socialist Republic of Romania on the Mutual Promotion and Guarantee of Investments ("the earlier Agreement"), signed on 26th day of November 1982, shall be terminated.

However, the provisions of the earlier agreement shah continue to apply to any disputes then may have arisen before the entry into force of this Agreement.

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

Done in duplicate at Bucharest this 25 day of June 1996, in Bahasa Malaysia, Romanian and English languages, all texts being equally authentic in case of any divergency of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF MALAYSIA

Rafidah Aziz

Minister of International Trade and Industry

FOR THE GOVERNMENT OF ROMANIA

Florin Georgescu

Minister Of State

Minister of Finance