AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA ON THE MUTUAL PROMOTION AND GUARANTEE OF INVESTMENTS

THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA, hereinafter referred to as "Contracting Parties",

Desiring to foster and strengthen economic co-operation between the two States,

Desiring to create favourable conditions for the investments which shall be made by investors of Malaysia in tho territory of tho Socialist Republic of Romania and by investors from tho Socialist Republic of Romania in the territory of Malaysia.

Recognising that the guarantee of the investments, in accordance with the present Agreement, stimulates the initiative in this field,

Have agreed as follows:

Article 1.

For the purpose of this Agreement:

(1) "Investment" means any participation or contribution of any kind to an economic enterprise or undertaking, including goods and financial means of the participants to the investment, and in particular, but not exclusively:

(a) movable and immovable property rights as well as any other rights in rem, such as mortgages, liens, pledges, usufruct and similar rights as defined in accordance with the law of the Contracting Party in the territory of which the respective goods is situated;

(b) shares or any other form of participatory interest in companies;

(c) profits reinvested, claims to money or other rights relating to services having an economic value;

(d) industrial property rights, copyrights, royalties, technical processes, know-how, trade marks, goodwill and other similar incorporeal rights;

(e) business concessions under the law including concessions regarding the prospecting for, or the extraction or winning, of natural resources,

(2) The term "investment" shall refer to all investments made by investors of one Contracting Party in the territory of the other Contracting Party which are approved in writing by the competent authority in accordance with the national legislation and the administrative practices of the latter Contracting Party. 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 given with regard to the assets originally invested.

(3) "Returns" means the amounts yielded by an investment, and in particular, though not exclusively, shall include profits, capital gains, dividends or royalties.

(4) "Investors" means:

(a) In respect of Malaysia, any company with a limited liability incorporated in the territory of Malaysia or any association of persons lawfully constituted in accord an with its legislation and as approved by the Malaysian Government to invest in the Socialist Republic of Romania;

(b) in respect of the Socialist Republic of Romania, Romanian economic units having legal personality.

(5) "Nationals" means:

(a) in respect of Malaysia, a person who is a citizen according to its Constitution;

(b) in respect of the Socialist Republic of Romania, a person who is a Romanian citizen according to the Romanian Law.

Article 2.

(1) Each Contracting Party shall encourage in its territory the investments of the investors of the other Contracting Party.

(2) Each Contracting Party agrees to admit the investment of investors of the other Contraction Party in accordance with its legislation and administrative practices and-such investment shall enjoy protection guarantees as may be, provided in this Agreement.

Article 3.

(1) Investments or investors of either Contracting Party in the territory of tho other Contracting Party shall not be subject to treatment less favourable than that accorded to investments or investors of any third State.

(2) Notwithstanding the provisions of paragraph (1) of this Article, the Contracting Party, which has concluded with one or more other Party an agreement regarding the formation of an economic or custom union, free trade area, or a regional economic organisation shall be free to grant a more favourable treatment to investments by investors of the State or States which are also parties to the said Agreement or by investors of some of these States.

Article 4.

(1) The investments made by investors of either Contracting Party in the territory of the other Contracting Party shall not be expropriated or subjected to other measures having s similar effect except for a public purpose and against prompt, adequate and effective compensation.

Such compensation should correspond to the fair value of the investment on the data of expropriation, be effectively realisable, freely transferable and paid without undue delay. 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) If a dispute between an investor and the Contracting Party in the territory of which the investment has been made, with regard to the amount of compensation, continues to exist after the exhaustion of all local administrative and judicial remedies in the country in which the investment has been made, any of them is entitled to submit the dispute for conciliation or arbitration, to the International Centre for tho Settlement of Investment Disputes, according to procedure provided for in the Convention for the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on I8 March 1965.

(3) Investors of one Contracting Party whose investments have suffered losses due to war or to other armed conflict or state of national emergency in the territory of the other Contracting Party, shall be accorded by the latter Contracting Party, as regards restitution, indemnity, compensation or other settlement, a treatment no less favourable than that granted to investors of any third State.

Article 5.

(1) Each Contracting Party shall, subject to its laws and regulations, allow without undue delay, in respect of the investments to the other Contracting.Party, the transfer of:

(a) net profits, dividends, royalties payments for technical assistance and fees received for technical services performed, as well as of any other current income, yielded from any investment of the investors of the other Contracting Party;

(b) the proceeds of the total or partial sale or liquidation of the investment;

(c) the payments of interest due and the repayment of the loans for investments;

(d) the earnings of nationals of a Contracting Party who are allowed to work in the framework of an investment made in the territory of the other Contracting Party.

(2) Each Contracting Party shall issue, after fulfilment of the legal obligations which are incumbent to investors, the

necessary licenses, in order to ensure the execution without delay of the transfers mentioned in paragraph (1) of the present Article.

Article 6.

(1) Each Contracting Party recognises the subrogation of the other Contracting Party which has made payments to its own investors who have invested in the territory of the other Contracting Party, under the guarantee of the present Agreement, in all rights and obligations that the said investors held under it.

(2) The paying Contracting Party shall not under tho paragraph (1) above obtain any rights or assume any obligations other or greater than those of the insured investor.

(3) The subrogated Contracting Party can assert the rights and claims and exercise the activities to the same extent and within the same limits as its predecessor in title.

Article 7.

(1) Transfer of currency according to Articles 4, 5, and 6 shall be made without undue delay at the rate of exchange in force for current transactions on the date of transfer.

(2) The currency to be used for transfers under paragraph 1) above shall refer to tho United States Dollars, Pound Starling, Deutschemark, French Franc, Japanase Yen or any other currency for which there are ready buyers in exchange for one of the currencies specified above.

Article 8.

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

(2) If a dispute cannot thus be settled within a period of six months following the request for such negotiations, it shall, upon the request of either Contracting Party, be submitted to on arbitral tribunal.

(3) Such arbitral tribunal shall be established in each individual case, each Contracting Party appointing one member, and those two members shall than agree upon o national of a third country as their Chairman to be appointed by tho two Contracting Parties. Such members shall be appointed within two months, and such Chairman within four months, after either Contracting Party has made known to the other Contracting Party that it desires the dispute to be submitted to an arbitral tribunal.

(4) If the arbitral tribunal is not constituted within the period specified in paragraph (3) above and no extension of the period has been agreed to by both Contracting Parties and in the absence of any other arrangement for the settlement of the dispute, either Contracting Party may 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 incapacitated from discharging his function, the Vice-President should make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is incapacitated from discharging his function, the member of the International Court of-Justice next in seniority who is not a national of either Contracting Party should make the necessary appointments.

(5) The arbitral tribunal shall base its decision on the provisions of the present Agreement as well as on the general principles and rules of international law. Before the arbitral tribunal gives its decision, it may at any state of the proceedings propose to the Parties an amicable settlement.

(6) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the costs of the arbitrator it has appointed and of its representation in the arbitral proceedings, the cost of the Chairman and the remaining costs shall be borne in actual parts by both Contracting Parties.

(7) In all other respects, the arbitral tribunal shall determine its own procedure.

Article 9.

(1) The present Agreement shall be submitted for ratification according to the constitutional procedure of each State and shall enter into force on the 30th day 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 unless, after the

expiry of that initial period of ten years, either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

(3) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall remain in force for a further period of ten years from that date.

Dona at Kuala Lumpur this 26th day of November 1982 in two originals, each in Bahasa Malaysia, Romanian Language and English Language, all texts being equally authentic. In case of differences of interpretation the text in the English Language shall be considered as the text of reference.

FOR THE GOVERNMENT OF MALAYSIA

FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC DF ROMANIA