AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE AND THE GOVERNMENT OF THE REPUBLIC OF POLAND ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Singapore and the Government of the Republic of Poland (each hereinafter referred to as a „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 State in the territory of the other State based on the principles of equality and mutual benefit;

Recognising that the encouragement and reciprocal protection of such investments will be conducive to stimulating business initiative and increasing prosperity in both States;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term „investment" means every kind of asset permitted by each Contracting Party in accordance with its laws and regulations, including, though not exclusively, any:-

a) Movable and immovable property and other property rights such as mortagage, usufruct, lien or pledge;

b) Share, stock, debenture and similar interests in companies;

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

d) Intellectual property rights and goodwill; and

e) Business concession conferred by law or under contract, including any concession to search for, cultivate, extract or exploit natural resources.

2. The term „returns" means monetary returns yielded by an investment including any profit, interest, capital gain, dividend, royalty or fee.

3. The term „national" means:

a) In respect of the Republic of Poland, any natural person who according to the laws of the Republic of Poland, is considered to be its citizen;

b) In respect of the Republic of Singapore, any citizen of Singapore within the meaning of the Constitution of the Republic of Singapore.

4 . The term „company" means:

a) In respect of the Republic of Poland, any company, firm, association or body, with or without legal personality incorporated, established or registered under the laws in force in the Republic of Poland;

b) In respect of the Republic of Singapore, any company, firm, association or body, with or without legal personality, incorporated, established or registered under the laws in force in the Republic of Singapore.

5. The term „freely convertible" means free of all currency exchange controls and transferable abroad in any currency at prevailing market rates.

Article 2. Applicability of this Agreement

1. This Agreement shall only apply:

a) In respect of investments in the territory of the Republic of Poland, to all investments made by nationals and companies of the Republic of Singapore in accordance with the laws and regulations of the Republic of Poland;

b) In respect of investments in the territory of the Republic of Singapore, to all investments made by nationals and companies of the Republic of Poland, which are specifically approved in writing by the competent authority designated by the Government of the Republic of Singapore and upon such conditions, if any, as it shall deem fit.

2. The provisions of the foregoing paragraph shall apply to all investments made by nationals and companies of either Contracting Party in the territory of the other Contracting Party, whether made before or after the coming into force of this Agreement.

Article 3. Promotion and Protection of Investment

1. Each Contracting Party shall encourage and create favourable conditions for nationals and companies of the other Contracting Party to make in its territory investments that are in line with its general economic policy.

2. Investments approved under Article 2 shall be accorded fair and equitable treatment and protection in accordance with this Agreement.

Article 4. Most Favoured Nation Provision

Neither Contracting Party shall in its territory subject investments admitted in accordance with the provisions of Article 2 or returns of nationals and companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of nationals and companies of any third State.

Article 5. Exceptions

1. The provisions of this Agreement relating to the grant of treatment not less favourable than that accorded to the nationals and companies of any third State shall not be construed so as to oblige one Contracting Party to extend to nationals and companies of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

a) Any regional arrangement for customs, monetary, tariff or trade matters (including a free trade area) or any agreement designed to lead in future to such a regional arrangement; or

b) Any arrangement with a third State or States in the same geographical region designed to promote regional co-operation in the economic, social, labour, industrial or monetary fields within the framework of specific projects.

2. The provisions of this Agreement shall not apply to matters of taxation in the territory of either Contracting Party. Such matters shall be governed by any Avoidance of Double Taxation Treaty between the two Contracting Parties and the domestic laws of each Contracting Party.

Article 6. Expropriation

1. Neither Contracting Party shall take any measure of expropriation, nationalization or other measures having the effect equivalent to nationalization or expropriation against the investment of nationals or companies of the other Contracting Party unless the measures are taken for any purpose authorised by law, on a non-discriminatory basis, in accordance with its laws and against compensation which shall be effectively realisable and shall be made without unreasonable delay. Such compensation, shall, subject to the laws of each Contracting Party, be the value immediately before the expropriation, nationalization or measure having the effect equivalent to nationalization or expropriation. The compensation shall be freely convertible and transferable.

2. The legality of any measure of expropriation, nationalization or other measures having the effect equivalent to nationalization or expropriation may at the request of the national or company affected, be reviewed by the competent court of the Contracting Party taking the measures in the manner prescribed by its laws.

3. Where a Contracting Party expropriates, nationalizes or takes measures having effect equivalent to nationalization or expropriation against the assets of a company which is incorporated or constituted under the laws in force in any part of its

own territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee compensation as specified therein to such nationals or companies of the other Contracting Party who are owners of those shares.

Article 7. Compensation for Losses

Nationals or companies of one 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, 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, if any, no less favourable than that which the latter Contracting Party accords to nationals or companies of any third State.

Article 8. Repatriation

1. Each Contracting Party shall guarantee to nationals or companies of the other Contracting Party the free transfer, in accordance with its laws and regulations and on a non-discriminatory basis, of their capital and the returns from any investments, including:

a) Profits, capital gain, dividends, royalties, interests and other current income accruing from any investment;

b) The proceeds of the total or partial liquidation of any investment;

c) Repayments made pursuant to a loan agreement in connection with investments;

d) License fees in relation to the matters in Article 1(1) (d);

e) Payments in respect of technical assistance, technical service and management fees;

f) Payments in connection with contracting projects;

g) Earnings of nationals of the other Contracting Party who work in connection with an investment in the territory of the former Contracting Party.

2. Nothing in paragraph (1) of this Article shall affect the free transfer of compensation paid under Article 6 of this Agreement.

Article 9. Exchange Rate

The transfers referred to in Articles 6 to 8 of this Agreement shall be effected at the prevailing market rate in freely convertible currency on the date of transfer.

Article 10. Laws

For the avoidance of any doubt, it is declared that all investments shall, subject to this Agreement, be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

Article 11. Prohibitions and Restrictions

The provisions of this Agreement shall not in any way limit the right of either Contracting Party to apply prohibitions or restrictions of any kind or take any other action which is directed to the protection of its essential security interests, or to the protection of public health or the prevention of diseases and pests in animals or plants.

Article 12. Subrogation

1. In the event that either Contracting Party (or any agency, institution, statutory body or corporation designated by it) as a result of an indemnity it has given in respect of an investment or any part thereof makes payment to its own nationals and companies in respect of any of their claims under this Agreement, the other Contracting Party acknowledges that the former Contracting Party (or any agency, institution, statutory body or corporation designated by it) is entitled by virtue of subrogation to exercise the rights and assert the claims of its own nationals and companies. The subrogated right or claim shall not be greater than the original right or claim of the said investor.

2. Any payment made by one Contracting Party (or any agency, institution, statutory body or corporation designated by it) to its nationals and companies shall not affect the right of such nationals and companies to make their claims against the other Contracting Party in accordance with Article 13.

Article 13. Investment Disputes

1. Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the area of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute. The party intending to resolve such dispute through negotiations shall give notice to the other of its intentions.

2. If the dispute cannot be thus resolved as provided in paragraph (1) of this Article within 6 months from the date of notice given thereunder, then the Contracting Party and the investor concerned shall refer the dispute to either conciliation in accordance with the United Nations Commission on International Trade Law Rules of Conciliation 1980 or to arbitration in accordance with the United Nations Commission on International Trade Law Rules on Arbitration, 1976 subject to the following provisions:

a) In respect of conciliation proceedings, there shall be two conciliators, one each appointed by the respective parties; and

b) In respect of arbitration proceedings, the following shall apply:

i) The Arbitral Tribunal shall consist of three arbitrators. Each party shall select an arbitrator. These two arbitrators shall appoint by mutual agreement a Chairman who shall be a national of a third State which has diplomatic relations with the Governments of the parties to the dispute. The arbitrators shall be appointed within two months from the date when one of the parties to the dispute inform the other of its intention to submit the dispute to arbitration after the lapse of the six months mentioned in paragraph (2) of this Article.

ii) The Arbitral Award shall be made in accordance with the provisions of this Agreement, the relevant domestic laws including the rules on the conflict of laws of the territory of the Contracting Party in which the investment dispute arises as well as the generally recognized principles of international law.

iii) If the necessary appointments are not made within the period specified in paragraph (2) (b) (i), either party may, in the absence of any other agreement, request the Secretary-General of the International Centre for the Settlement of Investment Disputes to make the necessary appointments.

iv) The tribunal shall reach its decision by a majority of votes.

v) The decision of the arbitral tribunal shall be final and the parties shall abide by and comply with the terms of its award.

vi) The arbitral tribunal shall state the basis of its decision and state reasons upon the request of either party.

vii) Each party concerned shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman in discharging his arbitral function and the remaining costs of the tribunal shall be borne equally by the parties concerned. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borned by one of the two parties, and this award shall be binding on both parties.

3. As an alternative to arbitration in accordance with the United Nations Commission on International Trade Law Rules on Arbitration, 1976, the parties may opt to have the arbitration conducted in accordance with the Arbitration Rules of the Singapore International Arbitration Centre.

4. The conciliation or arbitration shall, as far as possible, be held in Singapore.

5 . The provisions of this Article shall not prejudice the Contracting Parties from using the procedures specified in Article 14 where a dispute concerns the interpretation or application of this Agreement.

Article 14. Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through negotiation.

2. If any dispute cannot be settled, it shall upon the request of either Contracting Party be submitted to arbitration. The arbitral tribunal (hereinafter called „the tribunal") shall consist of three arbitrators, one appointed by each Contracting Party and the third, who shall be Chairman of the tribunal, appointed by agreement of the Contracting Parties.

3. Within two months of receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator, and within two months of such appointment of the two arbitrators, the Contracting Parties shall appoint the third arbitrator.

4 . If the tribunal shall not have been constituted within four months of receipt of the request for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator or arbitrators not yet appointed. If the President is a national of either Contracting Party or if he is unable to do so, the Vice-President may be invited to do so. If the Vice-President is a national of either Contracting Party or if he is unable to do so, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party may be invited to make the necessary appointments, and so on.

5. The tribunal shall reach its decision by a majority of votes.

6. The tribunal's decision shall be final and the Contracting Parties shall abide by and comply with the terms of its award.

7. Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitration proceedings and half the costs of the Chairman and the remaining costs. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Parties, and this award shall be binding on both Parties.

8. Apart from the above the tribunal shall establish its own rules of procedure.

Article 15. Other Obligations

If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties in addition to this Agreement, result in a position entitling investments by nationals of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such position shall not be affected by this Agreement. Each Contracting Party shall observe any commitment in accordance with its laws additional to those specified in this Agreement entered into by the Contracting Party, its nationals or companies with nationals or companies of the other Contracting Party as regards their investments.

Article 16. Entry Into Force, Duration and Termination

1. Each Contracting Party shall notify the other Contracting Party of the fulfillment of its internal legal procedures required for the bringing into force of this Agreement. This Agreement shall enter into force on the thirtieth day from the date of notification of the later Contracting Party.

2. This Agreement shall remain in force for a period of fifteen years and shall continue in force thereafter unless, after the expiry of the initial period of fourteen 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 Article 1 to 15 shall remain in force for a further period of fifteen years from that date.

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

Done in duplicate at Warsaw, Poland this Third day of June 1993, in the English language.

Hsu Tse-Kwang

Ambassador to the Republic of Poland

For the Government of the Republic of Singapore

Andrzej Ananicz

Undersecretary of State Ministry of Foreign Affairs

For the Government of the Republic of Poland