SYNTHESISED TEXT OF THE MLI AND THE AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE REPUBLIC OF KOREA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

General disclaimer on the Synthesised text document

This document presents the synthesised text for the application of the Agreement between the Government of Malaysia and the Government of the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 20 April 1982 (the "Agreement"), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Malaysia on 24 January 2018 and by Korea on 7 June 2017 (the "MLI").

This document was prepared on the basis of the MLI position submitted to the Depositary by Malaysia on 18 February 2021 and by Korea on 13 May 2020. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Agreement.

The sole purpose of this document is to facilitate the understanding of the application of the MLI to the Agreement and it does not constitute a source of law. The authentic legal texts of the Agreement and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Agreement are included in boxes throughout the text of this document in the context of the relevant provisions of the Agreement.

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Agreement (such as "Covered Tax Agreement" and "Agreement", "Contracting Jurisdictions" and "Contracting States"), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Agreement or to the Agreement must be understood as referring to the Agreement as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

References

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (P.U.(A) 224/2020) (provides the authentic legal texts of the MLI).

Agreement between the Government of Malaysia and the Government of the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (P.U.(A) 292/1982) (provides, in the case of Malaysia, the authentic legal text of the Agreement).

The MLI position of Malaysia submitted to the Depositary upon ratification on 18 February 2021 and of the MLI position of Korea submitted to the Depositary upon ratification on 13 May 2020 can be found on the MLI Depositary (OECD) webpage.

Disclaimer on the entry into effect of the provisions of the MLI

The provisions of the MLI applicable to the Agreement do not take effect on the same dates as the original provisions of the Agreement. Each of provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by Malaysia and Korea in their MLI positions.

Entry into force of the MLI:
1 June 2021 for Malaysia and 1 September 2020 for Korea.

Entry into effect of the MLI:
The provisions of the MLI shall have effect to each Contracting State with respect to the Agreement:

a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2022; and

b) with respect to all other taxes levied by each Contracting State, for taxes levied with respect to taxable periods beginning on or after 1 December 2021.

AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE REPUBLIC OF KOREA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of Malaysia and the Government of the Republic of Korea, ~~desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,~~

The following paragraph 1 of Article 6 of the MLI replaces the text referring to an intent to eliminate double taxation in the preamble of this Agreement:

ARTICLE 6 OF THE MLI - PURPOSE OF A COVERED TAX AGREEMENT

Intending to eliminate double taxation with respect to the taxes covered by this Agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions),

have agreed as follows:

Article 1
PERSONAL SCOPE

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2
TAXES COVERED

1. The taxes which are the subject of this Agreement are:
   (a) in Korea:
      (i) the income tax,
      (ii) the corporation tax, and
      (iii) the inhabitant tax,
      (hereinafter referred to as “Korean tax”);
   (b) in Malaysia:
      (i) income tax and excess profit tax,
      (ii) supplementary income taxes, that is, tin profits tax, development tax and timber profits tax, and

(iii) petroleum income tax,

(hereinafter referred to as "Malaysian tax").

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

Article 3
GENERAL DEFINITIONS

1. In this Agreement, unless the context otherwise requires:

(a) the term "Korea" means the territory of the Republic of Korea including any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights of the Republic of Korea with respect to the sea bed and sub-soil and their natural resources may be exercised;

(b) the term "Malaysia" means the Federation of Malaysia and includes any area adjacent to the territorial waters of Malaysia which, in accordance with international law, has been or may hereafter be designated under the laws of Malaysia as an area within which the rights of Malaysia with respect to the sea bed and sub-soil and their natural resources may be exercised;

(c) the terms "a Contracting State" and "the other Contracting State" mean Korea or Malaysia, as the context requires;

(d) the term "tax" means Korea tax or Malaysia tax, as the context requires;

(e) the term "person" includes an individual, a company and any other body of persons which is treated as a person for tax purposes;

(f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purpose;

(g) the terms "enterprise of a Contracting States" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except where the ship or aircraft is operated solely between places in the other Contracting State;

(i) the term "competent authority" means, in the case of Korea, the Minister of Finance or his authorised representative; and in the case of Malaysia, the Minister of Finance or his authorized representative;

(j) the term "national" means:

(i) in respect of Korea, all individual possessing the nationality of Korea and all legal persons, partnerships, associations and other entities deriving their status as such from the laws in force in Korea.

(ii) in respect of Malaysia, all individuals who are citizens of Malaysia and all legal persons, partnerships, associations and other entities deriving their status as such from the laws in force in Malaysia;

(k) the terms "resident of a Contracting State" and "resident of the other Contracting State" mean a resident of Korea or a resident of Malaysia, as the context requires.

2. As regards the application of this Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which this Agreement applies.

Article 4
RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein and is resident thereof by reason of his domicile, residence, place of head or main office, place of management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. In case of doubts the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 5
PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;

(g) a farm or plantation; and

(h) an installation or structure used for the exploration of natural resources.

3. A building or construction site constitutes a permanent establishment only if it lasts more than twelve months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise; and

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on installation or assembly project, or supervisory activities in connection with a construction, installation or assembly project, which is being undertaken for more than six months in that other State.

6. Notwithstanding the provisions of paragraphs 1 and 2, if a person (other than an agent of independent status to whom paragraph 7 applies) is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provision of that paragraph.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6
INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and

equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas well, quarries and other places of extraction of natural resources including timber or other forest produce. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7
BUSINESS PROFITS

1. The income or profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the income or profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each State be attributed to that permanent establishment the income or profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the income or profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. No income or profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. Where income or profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8
SHIPPING AND AIR TRANSPORT

1. Income or profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. The provisions of paragraph 1 shall also apply to income or profits derived from the participation in a pool, a joint business or in an international operating agency.

Article 9
ASSOCIATED ENTERPRISES

Where:

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any income or profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the income or profits of that enterprise and taxed accordingly.

The following paragraph 1 of Article 17 of the MLI applies to this Agreement:

ARTICLE 17 OF THE MLI – CORRESPONDING ADJUSTMENTS

Where a Contracting State includes in the profits of an enterprise of that Contracting State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of the Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10
DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. Dividends paid by a company which is a resident of Korea to a resident of Malaysia may be taxed in Korea according to the laws of Korea, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

(a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which owns directly at least 25 per cent of the capital of the company paying the dividends;

(b) 15 per cent of the gross amount of the dividends in all other cases.

3. Dividends paid by a company resident in Malaysia to a resident of Korea who is subject to Korean tax in respect thereof shall be exempt from any tax in Malaysia which is chargeable on dividends in addition to the tax chargeable in respect of the income of the company:

Provided that nothing in this paragraph shall affect the provisions of the Malaysian law under which the tax in respect of a dividend paid by a company resident in Malaysia from which Malaysian tax has been, or has been deemed to be, deducted may be adjusted by reference to the rate of tax appropriate to the Malaysian year of assessment immediately following that in which the dividend was paid.

4. Paragraphs 2 and 3 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5. The term "dividends" as used in this Article means income from shares or rights, not being debt-claims, participating in profits or income, as well as income from other corporate rights assimilated to income from shares by the taxation laws of the Contracting State of which the company making the distribution is a resident.

6. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 7 shall apply.

7. Where a company which is a resident of a Contracting State derives income or profits from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of income or profits arising in such other State.

Article 11
INTEREST

1. Interest arising in a Contracting States and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest paid or credited to a resident of Korea carrying on business of banking by a person licensed to carry on banking business in Malaysia, or on an approved loan or a long-term loan shall be exempt from Malaysian tax.

4. Notwithstanding the provisions of paragraphs 2 and 3, the Government of a Contracting State shall be exempt from tax in the other Contracting State in respect of interest derived by the Government from that other State.

5. For purposes of paragraph 4, the term "Government":

(a) in the case of Malaysia means the Government of Malaysia andshall include:

(i) the governments of the states;

(ii) the local authorities;

(iii) the Bank Negara Malaysia;

(iv) such institutions, the capital of which is wholly owned by the Government of Malaysia or the governments of the states or the local authorities, as may be agreed from time to time between the competent authorities of the Contracting States;

(b) in the case of Korea means the Government of the Republic of Korea and shall include:

(i) the local authorities;

(ii) the Bank of Korea;

(iii) the Export-Import Bank of Korea;

(iv) such institutions, the capital of which is wholly owned by the Government of the Republic of Korea or the local authorities, as may be agreed from time to time between the competent authorities of the Contracting States.

6. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent according to the taxation laws of the Contracting State in which the income arises.

7. The provisions of paragraphs 1, 2, 3 and 4 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

8. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, or a political sub-division, a local authority or statutory body thereof, or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

9. Where, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12
ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the laws of that State, but the tax so charged shall not exceed:

(a) 10 per cent of the gross amount of the royalties referred to in paragraph 4(a);

(b) 15 per cent of the gross amount of the royalties referred to in paragraph 4(b).

3. Notwithstanding the provisions of paragraph 2, approved industrial royalties derived from Malaysia by a resident of Korea shall be exempt from Malaysian tax.

4. The term "royalties" as used in this Article means payments of any kind received as a consideration for-

(a) the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, copyright of any scientific work, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience;

(b) the use of, or the right to use, cinematograph films, or tapes for radio or television broadcasting, or any copyright of literary or artistic work.

5. The term "approved industrial royalties" means royalties as defined in sub-paragraph 4(a) which are approved and certified by the competent authority of Malaysia as payable for the purpose of promoting industrial development in Malaysia and which are payable by an enterprise which is wholly or mainly engaged in activities falling within one of the following classes:

(a) manufacturing, assembling or processing;

(b) construction, civil engineering or ship-building; or

(c) electricity, hydraulic power, gas or water supply.

6. The provisions of paragraphs 2 and 3 shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article 7 shall apply.

7. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or statutory body thereof, or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

8. Where, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreements.

Article 13
CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the enterprise is a resident.

4. Gains from the alienation of any property other than those referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14
INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State. However, in the following circumstances such income may be taxed in the other Contracting State:

(a) if his stay in the other State is for a period or periods amounting to or exceeding in the aggregate 183 days in the calendar year concerned; or

(b) if the remuneration for his services in the other State is either derived from residents of that State or borne by a permanent establishment which a person not resident in that State has in that State and which, in either case exceeds 3,000 United States dollars in the calendar year concerned, notwithstanding that his stay in that State is for a period or periods amounting to less than 183 days during that calendar year.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15
DEPENDENT PERSONAL SERVICES

1. Subject to provisions of Articles 16, 18, 19, 20 and 21 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

(c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

Article 16
DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17
ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Article 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits, salaries, wages and similar income derived from activities exercised in a Contracting State by an entertainer or an athlete if his visit to that State is substantially supported from the public funds of the other Contracting State or a political sub-division, a local authority or statutory body thereof.

Article 18
PENSIONS AND ANNUITIES

1. Subject to the provision of paragraph 2 of Article 19, any pension or annuity derived by an individual who is a resident of a Contracting State from the other Contracting State shall be taxable only in the first-mentioned State.

2. The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 19
GOVERNMENT SERVICE

1. (a) Remuneration, other than a pension, paid by a Contracting state or a political sub-division, a local authority or statutory body thereof to an individual in respect of services rendered to that State, sub-division, authority or body shall be taxable only in that State.

   (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

      (i) is a national of that State; or

      (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division, a local authority or statutory body thereof to an individual in respect of services rendered to that State, sub-division, authority or body shall be taxable only in that State.

   (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division, a local authority or statutory body thereof.

4. The provisions of paragraphs 1 and 2 shall likewise apply in respect of remuneration or pensions paid by:

(a) in the case of Korea, the Bank of Korea, the Export-Import Bank of Korea, the Korea Trade Promotion Corporation and other government-owned institutions performing the functions of a government nature, as may be agreed from time to time between the competent authorities of the Contracting States; and

(b) in the case of Malaysia, the Bank Negara Malaysia, the Malaysian Industrial Development Authority, the Tourist Development Corporation and other government-owned institutions performing the functions of a governmental nature, as may be agreed from time to time between the competent authorities of the Contracting States.

Article 20
PROFESSORS AND TEACHERS

1. An individual who, at the invitation of a university, college, school or other similar recognised educational institution in a Contracting State, visits that State for a period not exceeding two years solely for the purpose of teaching or conducting research or both at such educational institution and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first mentioned State on any remuneration for such teaching or research in respect of which he is subject to tax in the other State.

2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

Article 21
STUDENTS AND APPRENTICES

An individual who is a resident in a Contracting State and is temporarily present in the other Contracting State solely:

(a) as a student at a recognised university, college or school in the other State,

(b) as a business or technical apprentice, or

(c) as the recipient of a grant, allowances or award for the primary purpose of study or research from a religious, charitable, scientific or educational organisation, shall not be taxed in the other State in respect of remittances from abroad for the purposes of his maintenance, education or training or in respect of a scholarship grant. The same shall apply to any amount representing remuneration for services rendered in that other State, provided that such services are in connection with his studies or practical training or are necessary for the purpose of his maintenance.

Article 22
OTHER INCOME

Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State except that if such income is derived from sources within the other Contracting State, it may also be taxed in that other State.

Article 23
METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. In the case of a resident of Korea, double taxation shall be avoided as follows:

Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea which shall not affect the general principle hereof, the Malaysian tax payable (excluding in the case of a dividend tax payable in respect of the profits out of which the dividend is paid) under the laws of Malaysia and in accordance with this Agreement, whether directly or by deduction, in respect of income from sources within Malaysia shall be allowed as a credit against Korean tax payable in respect of that income. The credit shall not, however, exceed that proportion of Korean tax which the income from sources within Malaysia bears to the entire income subject to Korean tax.

2. For the purpose of paragraph 1, the term "Malaysian tax payable" shall be deemed to include:

(a) in respect of dividends received from a company which is a resident of Malaysia, any amount which would have been payable as Malaysian tax but for an exemption from tax granted under the Malaysian laws relating to incentives for the promotion of economic development in Malaysia which were in force on the date of signature of this Agreement or any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character:

Provided that any deduction from Korean tax granted in accordance with the provisions of this paragraph shall not exceed an amount equal to 20 per cent of the gross amount of the dividends;

(b) in the case of interest to which paragraph 3 of Article 11 applies, an amount not exceeding 15 per cent of the gross amount of the interest in respect of which Malaysian tax would have been payable but for the exemption granted in accordance with that paragraph;

(c) in the case of approved industrial royalties to which paragraph 3 of Article 12 applies, an amount not exceeding 15 per cent of the gross amount of the royalties in respect of which Malaysian tax would have been payable but for the exemption granted in accordance with that paragraph.

3. In the case of a resident of Malaysia, double taxation shall be avoided as follows:

Subject to the provisions of the law of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia which shall not affect the general principle thereof, the Korean tax payable (excluding in the case of a dividend tax payable in respect of the profits out of which the dividend is paid) under the law of Korea and in accordance with this Agreement, whether directly or by deduction, by a resident of Malaysia in respect of income from sources within Korea shall be allowed as a credit against Malaysian tax payable in respect of such income, but in an amount not exceeding that portion of Malaysian tax which such income bears to the entire income chargeable to Malaysian tax.

4. For the purposes of paragraph 3, the term "Korean tax payable" shall, notwithstanding any reduction of tax under the provisions of paragraph 2 of Articles 10, 11 or 12, be deemed to include the amount of Korean tax which would have been payable in accordance with Korean tax laws but for the exemption or reduction of Korean tax in accordance with the Korean laws relating to incentives for the promotion of economic development in Korea which were in force on the date of signature of this Agreement or any other provisions which may subsequently be introduced in Korea in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting State to be of a substantially similar character: Provided that the amount of the tax referred to in this paragraph shall not, however, exceed:

(a) in the case of dividends an amount of 20 per cent of the gross amount of such dividend;

(b) in the case of interest an amount of 15 per cent of the gross amount of such interest; and

(c) in the case of royalties an amount of 15 per cent of the gross amount of such royalties.

Article 24
NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3. The provisions of this Article shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Moreover nothing in this Article shall be construed as obliging a Contracting State to grant to nationals of the other Contracting State not resident in the first-mentioned State those personal allowance, reliefs and reductions for tax purposes which are by law available on the date of signature of this Agreement only to nationals of the first mentioned State or to such other persons specified therein who are not resident in that State.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first mentioned State are or may be subjected.

6. In this Article the term "taxation" means taxes which are the subject of this Agreement.

Article 25
MUTUAL AGREEMENT PROCEDURE

1. ~~Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the State of which he is a national.~~

The following first sentence of paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph 1 of Article 25 of this Agreement:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those Contracting States, present the case to the competent authority of either Contracting State.

The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State with a view to the avoidance of taxation which is not in accordance with this Agreement.

The following second sentence of paragraph 2 of Article 16 of the MLI applies to this Agreement:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26
EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (order public).

Article 27
DIPLOMATIC AGENTS AND CONSULAR OFFICERS

Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

The following paragraph 1 of Article 7 of the MLI applies to this Agreement:

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE
(Principal purposes test provision)

Notwithstanding any provisions of the Agreement, a benefit under the Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Agreement.

Article 28
ENTRY INTO FORCE

1. This Agreement shall be ratified and the instruments of ratification shall be exchanged at …….. as soon as possible. The Agreement shall enter into force on the thirtieth day after the date of exchange of the instruments of ratification.

2. This Agreement shall have effect:

(a) in Korea:

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January of the year of the signature; and

(ii) In respect of other taxes for taxation years (income years) beginning on or after the first day of January of the year of the signature.

(b) in Malaysia:

in respect of Malaysian tax for any year of assessment beginning on or after the first day of January in the year immediately following the year of the signature.

Article 29
TERMINATION

This Agreement shall remain in force indefinitely but either Contracting State may, on or before the thirtieth day of June in any calendar year from the fifth year from that in which this Agreement was signed, give to the other Contracting State, through diplomatic channels, written notice of termination and, in such event this Agreement shall cease to have effect:

(a) in Korea:

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following that in which the notice is given; and

(ii) in respect of other taxes for taxation years (income years) beginning on or after the first day of January in the calendar year next following that in which the notice is given.

(b) in Malaysia:

in respect of Malaysian tax in any year of assessment beginning on or after the first day of January in the second calendar year next following that in which the notice is given.

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

DONE in duplicate at Kuala Lumpur this 20th day of April 1982, each in the Korean, Bahasa Malaysia and English languages the three texts being equally authoritative, except that in the case of divergence of interpretation the English text shall prevail.

For the Government of Malaysia	For the Government of the Republic of Korea

PROTOCOL

At the time of signing the Agreement between the Government of the Republic of Korea and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

1. In respect of Article 2 "Taxes Covered":

   It is understood that this Agreement shall apply to-

   (a) the Korean defense tax where charged by reference to the income tax or the corporation tax;

   (b) the Korea inhabitant tax which is imposed on income base only.

2. In respect of Article 8 "Shipping and Air Transport":

   It is understood that Korea shall exempt the value added tax on the operation of ships or aircraft in international traffic by an enterprise of Malaysia insofar as Malaysia shall not impose any tax in Malaysia similar to the value added tax of Korea on the operation of ships or aircraft in international traffic by an enterprise of Korea.

3. In respect of Article 10 "Dividends":

   It is understood that if after the date of signature of this Agreement the system of taxation in Malaysia applicable to the income and distributions of companies is altered by the introduction of a tax on the income or profits of a company (for which no credit or partial credit is given to its shareholders) and of a further tax on dividends paid by the company, both Korea and Malaysia shall consult each other with a view to reaching mutual agreement.

4. In respect of Article 10 “Dividends”:

   It is understood that:

   (a) Where dividend was paid by a company --

      (i) which was resident in both Malaysia and Singapore and the meeting at which the dividend was declared was held in Malaysia; or

      (ii) which was resident in Singapore and at the time of payment of that dividend the company declared itself to be a resident of Malaysia,

   pursuant to Article VII of the Agreement between the Government of Malaysia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed in Singapore on 26th December, 1968, the dividend shall be deemed to have been paid by a company resident in Malaysia;

(b) Where a dividend was paid by a company;

(i) which was resident in both Malaysia and Singapore and the meeting at which the dividend was declared was held in Singapore; or

(ii) which was resident in Malaysia and at the time of payment of that dividend the company declared itself to be a resident of Singapore,

pursuant to Article VII of the Agreement between the Government of Malaysia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of fiscal Evasion with respect to Taxes on Income signed in Singapore on 26th December, 1968, the dividend shall be deemed to have been paid by a company not resident in Malaysia.

5. In respect of Article 11 "Interest":

It is understood that if Malaysia agrees to a lower rate of tax than 15 per cent with any other country subsequent to the signature of this Agreement, Malaysia shall grant the same treatment to Korea.

Provided that Malaysia is not granted full tax credit by that other country credit for exempt dividends paid by a company resident in Malaysia, and the rate of tax referred to in paragraph (2) (a) of Article 12 on industrial royalties agreed to with that other country by Malaysia does not exceed 10 per cent.

6. In respect of Article 11 "Interest":

It is understood that the term "approved loan" mean any loan or other indebtedness approved by the competent authority of Malaysia as being made or incurred for the purpose of financing development projects or for the purchase of capital equipment for development projects in Malaysia. The term "long-term loan" means any loan made or funds deposited as defined in Section 2 of the Income Tax Act, 1967 of Malaysia.

7. In respect of Article 12 and 23 "Royalties" and "Methods for elimination of double Taxation":

It is understood that the film-hire duty imposed on film rentals (royalties) for the use of, or right to use, cinematograph films derived by a resident of Korea from sources in Malaysia shall be deemed to be Malaysian tax payable for the purpose of paragraph 1 of Article 23: Provided that such royalties shall not be liable to Malaysian tax referred to in paragraph 1 (b) of Article 2.

8. It is understood that where this Agreement provides (with or without other conditions) that income from sources in Korea shall be exempt from tax, or taxed at a reduced rate in Korea and under the laws in force in Malaysia the said income is subject to tax by reference to the amount thereof which is remitted to or received in Malaysia and not by reference to the full amount thereof, then the exemption or reduction of tax to be allowed under this Agreement in Korea shall apply to so much of the income as is remitted to or received in Malaysia.

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

DONE in duplicate at Kuala Lumpur, this 20th day of April 1982, each in the Korean, Bahasa Malaysia and English languages the three texts being equally authoritative, except that in the case of divergence of interpretation the English text shall prevail.