SYNTHESISED TEXT OF THE MLI AND THE AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT 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 Arab Republic of Egypt for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 14 April 1997 (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 Egypt 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 Egypt on 30 September 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made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability.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.

*Subject to changes (whenever applicable)

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 Arab Republic of Egypt for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (P.U.(A) 49/1998) (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 Egypt submitted to the Depositary upon ratification on 30 September 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 Egypt in their MLI positions.

Entry into force of the MLI:

1 June 2021 for Malaysia and 1 January 2021 for Egypt.

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 ARAB REPUBLIC OF EGYPT 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 ARAB REPUBLIC OF EGYPT

~~DESIRING to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and profits,~~

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:

CHAPTER I
Scope of the Agreement

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. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State enumerating in paragraph 3 of this Article, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income, all taxes imposed on total income, or on elements of income including taxes on gains from the alienation of movable or immovable property, taxes on the total amount of wages or salaries paid by enterprises.

3. The existing taxes to which the Agreement shall apply are:

(a) in the case of the Arab Republic of Egypt:

(i) tax on income derived from immovable property the land tax and the building tax;

(ii) unified tax on income of individuals levied by the law No.157 for the year 1981 and amended by the law No. 187 for the year 1993;

(iii) corporation profits tax;

(iv) development of the financial resources of the state, duty imposed by the law No. 147 for the year 1984 and its amendments; and

(v) supplementary taxes imposed as percentages of taxes mentioned above or otherwise;

(hereinafter referred to as "Egyptian tax");

(b) in the case of Malaysia:

(i) the income tax; and

(ii) the petroleum income tax;

(hereinafter referred to as "Malaysian tax").

4. The Agreement shall also apply to any identical or substantially similar taxes which are imposed 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 substantial changes which have been made in their respective taxation laws.

CHAPTER II
Definitions

Article 3
GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

(a) (i) the term "Egypt" means the Arab Republic of Egypt and, when used in a goegraphical sense, it means:

(a) the national territory;

(b) the territorial sea;

(c) the area beyond and adjacent to the territorial sea over which Egypt has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources whether living or non-living of the waters superjacent to the seabed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the area and other rights in accordance with international law;

(d) the continental shelf;

(ii) the term "Malaysia" means the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters, and includes any area extending beyond the limits of the territorial waters of Malaysia, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia and in accordance with international law as an area over which Malaysia has sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non-living;

(b) the terms "a Contracting State" and "the other Contracting State" mean Egypt or Malaysia as the case may be;

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

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

(e) the terms "enterprise of a Contracting State" 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;

(f) the term "tax" means Egyptian tax or Malaysian tax as the context requires;

(g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State except when the ship or aircraft is operated solely between places in the other Contracting State;

(h) the term "competent authority" means:

(i) in the case of Egypt, the Minister of Finance or his authorised representative;

(ii) in the case of Malaysia, the Minister of Finance or his authorised representative;

(i) the term "national" means:

(i) any individual possessing the nationality or citizenship or a Contracting State;

(ii) any legal person, partnership, association and any other similar entity deriving its status as such from the laws in force in a Contracting State.

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

Article 4
RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:

(a) in the case of Malaysia, a person who is resident in Malaysia for the purposes of Malaysian tax; and

(b) in the case of Egypt, a person who is resident in Egypt for the purposes of Egyptian tax.

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 interest);

(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.

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" shall include especially:

(a) a place of management;

(b) a branch;

(c) premises used as sales outlets;

(d) an office;

(e) a factory;

(f) a workshop;

(g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources including timber or other forest produce; and

(h) a farm or plantation.

3. The term "permanent establishment" likewise encompasses a building site, a construction, assembly or installation project or supervisory activities in connection therewith but only where such site, project or activities continue for a period of more than six 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 occasional delivery of goods or merchandise belonging to the enterprise and deriving no profits;~~

~~(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or occasional delivery and deriving no profits;~~

~~(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 carrying on, for the enterprise, any other activities of a preparatory or auxiliary character.~~

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

ARTICLE 13 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS

The following paragraph 2 of Article 13 of the MLI replaces paragraph 4 of Article 5 of this Agreement:

Notwithstanding the provisions of Article 5 of the Agreement, the term "permanent establishment" shall be deemed not to include:

a) i) the use of facilities solely for the purpose of storage, display or occasional delivery of goods or merchandise belonging to the enterprise and deriving no profits;

ii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or occasional delivery and deriving no profits;

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

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

b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);

c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),

provided that such activity or, in the case of subparagraph c), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

The following paragraph 4 of Article 13 of the MLI applies to paragraph 4 of Article 5 of this Agreement:

Paragraph 4 of Article 5 of the Agreement shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and:

a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of Article 5 of the Agreement; or

b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

5. ~~Notwithstanding the provisions of paragraphs 1 and 2 where a person – other than an agent of an independent status to whom paragraph 7 applies – is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person has and habitually exercises in that State an authority to conclude contracts in the name of 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 provisions of that paragraph.~~

The following paragraph 1 of Article 12 of the MLI replaces paragraph 5 of Article 5 of this Agreement:

ARTICLE 12 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH COMMISSIONNAIRE ARRANGEMENTS AND SIMILAR STRATEGIES

Notwithstanding Article 5 of the Agreement, but subject to paragraph 2 of Article 12 of the MLI, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:

a) in the name of the enterprise; or

b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use; or

c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that Contracting State in respect of any activities which that person undertakes for the enterprise unless these activities, if they were exercised by the enterprise through a fixed place of business of that enterprise situated in that Contracting State, would not cause that fixed place of business to be deemed to constitute a permanent establishment under the definition of permanent establishment included in the provisions of Article 5 of the Agreement.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. ~~An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.~~

The following paragraph 2 of Article 12 of the MLI replaces paragraph 7 of Article 5 of this Agreement:

ARTICLE 12 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH COMMISSIONNAIRE ARRANGEMENTS AND SIMILAR STRATEGIES

Paragraph 1 of Article 12 of the MLI shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned Contracting State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

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.

The following paragraph 1 of Article 15 of the MLI applies to this Agreement:

ARTICLE 15 OF THE MLI – DEFINITION OF A PERSON CLOSELY RELATED TO AN ENTERPRISE

For the purposes of the provisions of Article 5 of the Agreement, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

Chapter III
TAXATION OF INCOME

Article 6
INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including rental income from agriculture) situated in the other Contracting State may be taxed in that other State.

2. For the purposes of this Agreement, the term "immovable property" shall be defined in accordance with the laws 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 wells, quarries and other places of extracting 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 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 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 Contracting State be attributed to that permanent establishment the 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 the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purpose of the business 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 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. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall however be such that the result shall be in accordance with the principles contained in this Article.

6. For the purposes of the preceding paragraph, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where 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. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or 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 enterprises of a Contracting State and an enterprise of the other Contracting State;

and in either case 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 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 profits of that enterprise and taxed accordingly.

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 Malaysia to a resident of Egypt who is the beneficial owner 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. 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 which is a resident of 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.

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

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

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11
INTEREST

1. Interest 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 interest may also 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 to which a resident of Egypt is beneficially entitled shall be exempt from Malaysian tax if the loan or other indebtedness in respect of which the interest is paid is an approved loan as defined in section 2(1) of the Income Tax Act, 1967 of Malaysia.

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 from the Government of that other Contracting State or companies or institutions wholly owned by the Government of either
Contracting State.

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

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

(i) the governments of the States;

(ii) the local authorities;

(iii) the statutory bodies;

(iv) the Bank Negara Malaysia;

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

(i) the local authorities;

(ii) the statutory bodies;

(iii) the Central Bank of Egypt.

6. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prices attaching to such securities, bonds or debentures.

7. The provisions of paragraphs 1, 2 and 3 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 cases, 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, a political subdivision, a local authority, statutory body 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 beneficial owner or between both of them and some other person, the amount of the interest 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 beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payment 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 also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received, as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such a case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority, statutory body or a resident of that State. Where, however, the person paying such 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 liability 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 situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person the amount of the royalties, 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 beneficial owner in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In such 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 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 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, 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 ship or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 shall be taxable in the Contracting State where the alienator is resident. However, when the alienator owns 20 per cent or more of the shares of a company which is a resident of the other Contracting State, such gains may be taxed in that other State.

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 United States Dollars Four Thousand (US$ 4,000.00) 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 the provisions of Articles 16, 18, 19 and 20, 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 (including employment exercised by top level management) 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;

(b) the remuneration is paid by, or on behalf of, an employer who is not 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 derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16
DIRECTORS' FEES

Directors' fees and 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
INCOME EARNED BY ENTERTAINERS AND ATHLETES

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artist 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 derived from activities exercised in a Contracting State if the visit to that State is directly and fully supported wholly from the Governmental funds of the other Contracting State, a political subdivision, a local authority or a statutory body thereof.

Article 18
PENSIONS AND ANNUITIES

1. Subject to the provisions of paragraph 2 of Article 19, any pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in both Contracting States.

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 subdivision, a local authority or a statutory body thereof to any individual in respect of services rendered to that State or political subdivision, local authority or statutory body thereof 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 other State and the recipient is a resident of that other State who:

(i) is a national of that other State; or

(ii) did not become a resident of that other State solely for the purposes of performing the services.

2. Any pension paid by, or out of funds created by, a Contracting State, a political subdivision, a local authority or a statutory body thereof to any individual in respect of past services rendered to that State, political subdivision, local authority or statutory body thereof shall be taxable only in that State.

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

Article 20
STUDENTS AND APPRENTICES

1. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in the other State solely:

(a) as a student at a recognised university, college, school or other similar recognised educational institution in that other State;

(b) as a business or technical apprentice; or

(c) as a recipient of a grant, allowance or award for the primary purpose of study, research or training from the Government of either State or from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of either State,

shall be exempt from tax in that other State on:

(i) all remittances from abroad for the purposes of his maintenance, education, study, research or training;

(ii) the amount of such grant, allowance or award; and

(iii) any remuneration in respect of services in that other State provided the services are performed in connection with his study, research or training or are necessary for the purposes of his maintenance.

Article 21
PROFESSORS, TEACHERS AND RESEARCHERS

1. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any university, college or other similar educational institution, visits that other State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other State on any remuneration for such teaching or research which is subject to tax in the first-mentioned Contracting 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 22
OTHER INCOME

1. Subject to the provisions of paragraph 2, 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.

2. However, if such income [is] derived by a resident of a Contracting State from sources in the other Contracting State, such income may also be taxed in the State in which it arises, and according to the law of that State.

Chapter IV
ELIMINATION OF DOUBLE TAXATION

Article 23
ELIMINATION OF DOUBLE TAXATION

1. In the case of Malaysia, double taxation shall be avoided as follows:

Subject to the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, Egyptian tax payable under the laws of Egypt and in accordance with this Agreement by a resident of

Malaysia in respect of income derived from Egypt shall be allowed as a credit against Malaysian tax payable in respect of that income. The credit shall not, however, exceed that part of the Malaysian tax, as computed before the credit is given, which is appropriate to such item of income.

2. For the purposes of paragraph 1, the term "Egyptian tax payable" shall be deemed to include the tax which is otherwise payable in Egypt, but has been reduced or waived by Egypt under its legal provision for tax incentives.

3. In the case of Egypt, double taxation shall be avoided as follows:

Where a resident of Egypt derives income which, in accordance with the provisions of this Agreement may be taxed in Malaysia, Egypt shall allow as a deduction from the tax on the income of that resident an amount equal to the Malaysian tax payable in Malaysia. Such deduction shall not, however, exceed that part of the income tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in that other State.

Where in accordance with any provision of this Agreement income derived by a resident of Egypt is exempt from tax in Egypt; Egypt may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account exempted income.

4. For the purposes of paragraph 3, the term "Malaysian tax payable" shall be deemed to include Malaysian tax which would, under the laws of Malaysia and in accordance with this Agreement, have been payable on any income derived from sources in Malaysia had the income not been taxed at a reduced rate or exempted from Malaysian tax in accordance with the provisions of this Agreement and

(a) the special incentives laws for the promotion of economic development of Malaysia so far as they were in force on, and have not been modified since, the date of signature of this Agreement or have been only in minor respects so as not to affect their general character; and

(b) any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, the investment incentives laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character; and

(c) interest to which paragraph 3 of Article 11 applies had that interest not been exempted from Malaysian tax in accordance with that paragraph.

Chapter V
SPECIAL PROVISIONS

Article 24
NON-DISCRIMINATION

1. The 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. Nothing in this Article shall be construed as:

(a) 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;

(b) affecting the application in Egypt of Article 4, Paragraph 9 and Article 120, Paragraph 4 of law No. 157 of 1981 (as they may be amended from time to time in minor respects without affecting the general principle thereof) provided that if the exemption given by either of these Articles are made available to nationals of any State or territory other than a Contracting State such exemption shall likewise be made available to nationals of Malaysia;

(c) obliging Malaysia to grant to nationals of Egypt not resident in Malaysia 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 Malaysia who are not resident in Malaysia.

4. 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 that first-mentioned State, are or may be subjected.

5. Nothing in this Article shall be construed so as to prevent either Contracting State from limiting to its nationals the enjoyment of tax incentives designed to promote economic development in that State.

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

Article 25
MUTUAL AGREEMENT PROCEDURE

1. ~~Where a resident of a Contracting State 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 law 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 Contracting 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 the 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 the 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 State.

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

4. A Contracting State shall not, after the expiry of the time limits provided in its national laws, increase the tax of a resident of either of the Contracting States by including therein items of income which have also been charged to tax in the other Contracting State. This paragraph shall not apply in the case of fraud, wilful default or neglect.

5. The competent authorities of the Contracting States may communicate with each

other directly for the purposes of applying the Agreement.

Article 26
EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting State shall exchange such information as is necessary for the carrying out the provisions of this Agreement or of the domestic laws of the Contracting State concerning taxes covered by the Agreement, in so far as the taxation thereunder is not contrary to the Agreement in particular for the prevention of fraud or evasion of such taxes. 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. However, if the information is originally regarded as secret in the transmitting State it 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 which are the subject to the Agreement.

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 administrative 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 disclose of which would be contrary to public policy (order public).

Article 27
DIPLOMATIC AND CONSULAR OFFICERS

Nothing in this Agreement shall affect the fiscal privileges of diplomatic 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 and supersedes the provisions of 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.

Chapter VI
FINAL PROVISIONS

Article 28
ENTRY INTO FORCE

1. This Agreement shall enter into force on the date when the last of all such things shall have been done in Malaysia and Egypt as are necessary to give the Agreement the force of law in Malaysia and Egypt respectively, and shall thereupon have effect:

(a) in Malaysia:

as respects Malaysian tax for any year of assessment beginning on or after 1 January in the second calendar year following the year in which the Agreement enters into force;

(b) in Egypt:

(i) as respects tax withheld at the source on amounts paid or credited on or after the first day of January in the calendar year following that in which the Agreement enters into force; and

(ii) as respects other taxes for taxation years beginning on or after the first day of January in the calendar year following that in which the Agreement enters into force.

2. The Governments of the Contracting States shall, as soon as possible, inform one another in writing when the last of all such things shall have been done as are necessary to give the Agreement the force of law in the respective Contracting States.

Article 29
TERMINATION

This Agreement shall continue in effect indefinitely but the Government of either Contracting States may, on or before the 30th day of June in any calendar year give notice of termination to the Government of the other Contracting State and, in such event, the Agreement shall cease to be effective:

(a) in Malaysia:

as respects Malaysian tax for the year of assessment beginning on or after 1 January in the second calendar year following that in which such notice is given and subsequent years of assessment;

(b) in Egypt:

(i) as respects tax withheld at the source on amounts paid or credited on or after the first day of January in the calendar year following that in which the notice is given; and

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

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement.

DONE in duplicate at Kuala Lumpur this 14th day of April 1997, in the Arabic Language, Bahasa Malaysia, and the English Language, all three texts being equally authentic. In the case of any divergence of interpretation the English text shall prevail.

FOR THE GOVERNMENT OF MALAYSIA	FOR THE GOVERNMENT OF ARAB REPUBLIC OF EGYPT