SYNTHESISED TEXT OF THE MLI AND THE AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF FINLAND 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 Finland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 28 March 1984 (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 Finland on 7 June 2017 (the "MLI").

This document was prepared in consultation with the competent authority of Finland and represents a shared understanding of the modifications made to the Agreement by 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 Finland on 25 February 2019 and 27 June 2023. 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made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability.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 Finland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (P.U.(A) 353/1984) (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 Finland submitted to the Depositary upon ratification on 25 February 2019 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 Finland in their MLI positions.

Entry into force of the MLI:
1 June 2021 for Malaysia and 1 June 2019 for Finland.

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

a) in Malaysia:

   (i) 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

   (ii) with respect to all other taxes levied by Malaysia, for taxes levied with respect to taxable periods beginning on or after 1 December 2021; and

b) in Finland

   (i) 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

   (ii) with respect to all other taxes levied by Finland, for taxes levied with respect to taxable periods beginning on or after 1 January 2022.

AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF FINLAND 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 Finland, ~~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 existing taxes to which this Agreement shall apply are:
   (a) in Finland:
      (i) the state income tax;
      (ii) the communal tax;
      (iii) the sailors' tax; and
      (iv) the tax withheld at source from non-residents' income;
      (hereinafter referred to as "Finnish tax");
   (b) in Malaysia:
      (i) the income tax and the excess profit tax;
      (ii) the supplementary income taxes, that is, the tin profits tax, the development tax and the timber profits tax; and

(iii) the petroleum income tax;

(hereinafter referred to as "Malaysian tax").

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

Article 3
GENERAL DEFINITIONS

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

(a) the term "Finland" means the Republic of Finland and, when used in a geographical sense, means the territory of the Republic of Finland, and any area adjacent to the territorial waters of the Republic of Finland within which, under the laws of Finland and in accordance with international law, the rights of Finland with respect to the exploration and exploitation of the natural resources, whether living or non-living, of the sea-bed and sub-soil and the superjacent waters, 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 concerning the Continental Shelf as an area within which the rights of Malaysia with respect to the exploration and exploitation of natural resources, whether living or non-living, of the sea-bed and sub-soil and the superjacent waters, may be exercised;

(c) the terms "Contracting State", "one of the Contracting States" and "other Contracting State" mean Finland or Malaysia, as the context requires;

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

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

(f) 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;

(g) the term "tax" means Finnish tax or Malaysian tax, as the context requires;

(h) the term "national" means:

(i) in respect of Finland, any individual possessing the nationality of Finland, and any legal person, partnership and association deriving its status as such from the laws in force in Finland;

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

(i) 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;

(j) the term "competent authority" means:

(i) in Finland, the Ministry of Finance or its authorized representative; and

(ii) in Malaysia, the Minister of Finance or his authorized representative.

2. As regards to 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
RESIDENCE

1. For the purposes of this Agreement, a person is a resident of a Contracting State:

(a) in the case of Finland, if the person is resident in Finland for the purposes of Finnish tax; and

(b) in the case of Malaysia, if the person is resident in Malaysia for the purposes of Malaysian tax.

2. Where by reason of the provisions of paragraph 1 of this Article 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 of this Article 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" 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 including timber or other forest produce; and

(g) a farm or plantation.

3. A building site or construction, installation or assembly project constitutes a permanent establishment only if it lasts more than six months.

4. An enterprise shall not be deemed to have a permanent establishment merely by reason of:

(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 activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.

5. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if:

(a) it carries on supervisory activities in that State for more than six months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that State; or

(b) substantial equipment is being used in that State by, for or under contract with the enterprise.

6. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 7 applies) shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if:

(a) he has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

(b) he maintains in that State a stock of goods or merchandise belonging to the enterprise from which he habitually fills orders on behalf of the enterprise; or

(c) he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

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 a person is acting in the ordinary course of his business as such a broker or agent.

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 (including income from agriculture or forestry) 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 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 extraction of natural resources or of timber or other forest produce. Ships, boats and aircraft shall not be regarded as immovable property.

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

4. Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of immovable property held by the company, the income from the direct use, letting, or use in any other form of such right to enjoyment may be taxed in the Contracting State in which the immovable property is situated.

5. The provisions of paragraphs 1 and 3 of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

6. The provisions of paragraph 4 of this Article shall also apply to the income from a right of enjoyment referred to in that paragraph of an enterprise and to income from such right of enjoyment used for the performance of professional services.

Article 7
BUSINESS INCOME

1. The income 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 of the enterprise may be taxed in the other State but only so much of it as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article, 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 income 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 of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses (including executive and general administrative expenses) which are reasonably connected with the permanent establishment and which would be deductible if the permanent establishment were an independent entity that incurred those expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

4. No income 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. If the information available to the competent authority of a Contracting State is inadequate to determine the income to be attributed to the permanent establishment of an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person by the exercise of a discretion or the making of an estimate by the competent authority, provided that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

6. For the purposes of the preceding paragraphs, the income 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 income includes any item of income which is dealt with separately in another Article of the Agreement, the provisions of that other Article, (except where otherwise provided in that Article) shall not be affected by the provisions of this Article.

Article 8
SHIPPING AND AIR TRANSPORT

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

2. Notwithstanding the provisions of paragraph 1 of Article 7, income derived from the operation of ships or aircraft solely between places in a Contracting State may be taxed in that State.

3. The provisions of paragraphs 1 and 2 of this Article shall also apply to income derived by an enterprise of a Contracting State from its 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 case conditions operate between the two enterprises in their commercial or financial relations which differ from those which would operate between independent enterprises, then any income which, but for those conditions, might have been expected to accrue to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the income of that enterprise and taxed accordingly.

The following paragraph 1 of Article 17 of the MLI applies and supersedes the provisions of 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 Covered Tax Agreement and the competent authorities of the Contracting State shall if necessary consult each other.

Article 10
DIVIDENDS

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

2. However, dividends paid by a company which is a resident of Finland, being dividends to which a resident of Malaysia is beneficially entitled, may also be taxed in Finland and according to the law of Finland, but the tax so charged shall not exceed:

(a) 5 per cent of the gross amount of the dividends if the recipient is a company (other than a partnership) which holds directly at least 10 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 which is a resident of Malaysia for the purposes of Malaysian tax, being dividends to which a resident of Finland is beneficially entitled, 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. The term "dividends" as used in this Article means income from 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.

5. Nothing in the foregoing paragraphs of this Article shall affect the taxation of the company in respect of the profits out of which the dividends are paid.

6. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the person beneficially entitled to 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 by virtue of which the dividends are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

Article 11
INTEREST

1. Interest arising in a Contracting State, being interest to which a resident of the other Contracting State is beneficially entitled, 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 law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 of this Article:

(a) interest to which a resident of Finland 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 or a long-term loan as defined in section 2(1) of the Income Tax Act 1967 of Malaysia (as amended), or if such interest is paid to the Government of Finland, a local authority or a statutory body thereof, or the Finnish Export Credit Limited or the Finnish Fund for

Industrial Co-operation Limited, or any institution wholly or mainly owned by the Government of Finland, a local authority or a statutory body thereof, as may be agreed from time to time between the competent authorities of the Contracting States;

(b) interest to which a resident of Malaysia is beneficially entitled shall be exempt from Finnish tax, if such interest is paid to the Government of Malaysia, a government of a State, a local authority or a statutory body thereof, the Bank Negara Malaysia, or any institution the capital of which is wholly or mainly owned by the Government of Malaysia or a government of a State or a local authority or a statutory body thereof, as may be agreed from time to time between the competent authorities of the Contracting States.

4. The term "interest" in this Article means interest from government securities, or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and from debt claims of every kind as well as other income assimilated to interest by the taxation law of the Contracting State in which the income arises.

5. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the person beneficially entitled to 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.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a 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.

7. Where, by reason of a special relationship between the payer and the person beneficially entitled to the interest 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 might be expected to have been agreed upon by the payer and the person so entitled 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 Agreement.

Article 12
ROYALTIES

1. Royalties arising in a Contracting State, being royalties to which a resident of the other Contracting State is beneficially entitled, 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 law of that State, but the tax so charged shall not exceed:

(a) in the case of Finland, 5 per cent of the gross amount of the royalties;

(b) in the case of Malaysia, 15 per cent of the gross amount of the royalties.

3. Notwithstanding the provisions of paragraph 2 of this Article, approved industrial royalties derived from Malaysia by a resident of Finland who is the beneficial owner thereof shall be exempt from Malaysian tax.

4. The term "royalties" in this Article means payments of any kind to the extent to which they are paid as consideration for:

(a) the use of, or the right to use, any

(i) copyright, patent, design or model, plan, secret formula or process, trade mark, or other like property or right;

(ii) industrial, commercial or scientific equipment; or

(iii) cinematograph film or tape for radio or television broadcasting;

(b) the supply of scientific, technical, industrial or commercial knowledge or information;

(c) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a)(i), any such equipment as is mentioned in subparagraph (a)(ii), or any such knowledge or information as is mentioned in subparagraph (b).

5. The term "approved industrial royalties" as used in this Article means royalties as defined in paragraph 4 of this Article 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 shipbuilding; or

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

6. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the person beneficially entitled to 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 giving rise to the royalties is effectively connected with such permanent establishment. 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 sub-division, a local authority or a statutory body thereof or a resident of that 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 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 is situated.

8. Where, by reason of a special relationship between the payer and the person beneficially entitled to the royalties 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 person so entitled 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 royalties paid shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

9. Royalties derived by a resident of Finland being royalties that, as film rentals, are subject to the cinematograph film hire duty in Malaysia shall not be liable to Malaysian tax.

Article 13
CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in paragraph 2 of Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains derived by a resident of a Contracting State from the alienation of shares or other corporate rights referred to in paragraph 4 of Article 6 may be taxed in the Contracting State in which the immovable property held by the company is situated.

Article 14
PERSONAL SERVICES

1. Subject to Articles 15, 16, 18, 19 and 20, remuneration (other than a pension) derived by an individual who is a resident of a Contracting State in respect of personal (including professional) services shall be taxable only in that State unless the services are performed in the other Contracting State. If the services are so performed, such remuneration as is derived in respect thereof may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration (other than a pension) derived by an individual who is a resident of a Contracting State in respect of personal (including professional) services performed in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in that other State for a period or periods not exceeding in the aggregate 183 days in the basis year or taxable year, as the case may be;

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

(c) the remuneration is not deductible in determining taxable profits of a permanent establishment which that person has in that 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 15
DIRECTORS' FEES

Notwithstanding the provisions of Article 14, directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or any other similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 16
ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Article 14, 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 and 14, 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 of this Article shall not apply to remuneration or income derived from activities exercised in a Contracting State that are directly connected with a visit to that State that is arranged by and is directly or indirectly supported wholly or substantially from the public funds of the other Contracting State, a political sub-division, a local authority or a statutory body thereof.

Article 17
PENSIONS AND ANNUITIES

1. Any pension (other than a pension of the kind referred to in paragraph 2 of Article 18) or other similar payment or any annuity paid to a resident of a Contracting State shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, pensions and other payments made under the social security legislation of a Contracting State shall be taxable only in that State.

3. 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 18
GOVERNMENT SERVICE

1. Remuneration, other than a pension or annuity, paid by a Contracting State, a political sub-division, a local authority or a 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. However, such remuneration shall be taxable only in the Contracting State of which the individual is a resident if the services are rendered in that State and the individual:

(a) is a national of that State; or

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

2. Any pension paid by, or out of funds created by, a Contracting State, a political sub-division, a local authority or a 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.

3. Notwithstanding the provisions of paragraph 1 and 2 of this Article, the provisions of Articles 14, 15 and 17 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, a political sub-division, a local authority or a statutory body thereof.

Article 19
STUDENTS AND APPRENTICES

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

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

(ii) as a business or technical apprentice therein for a period not exceeding 2 years from the date of his first arrival in that other State in connection with that visit,

shall be exempt from tax in that other State on:

(a) all remittances from abroad for the purposes of his maintenance, education or training; and

(b) any remuneration not exceeding two thousand five hundred United States dollars for personal services rendered in that other State with a view to supplementing the resources available to him for such purposes.

2. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and is present in the other State for the purposes of study, research or training solely as a recipient of a grant, allowance or award from the Government of either State or from a scientific, educational, religious or charitable organization or under a technical assistance programme entered into by the Government of either State for a period not exceeding 2 years from the date of his first arrival in that other State in connection with that visit shall be exempt from tax in that other State on:

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

(b) all remittances from abroad for the purposes of his maintenance, education or training; and

(c) any remuneration not exceeding two thousand five hundred United States dollars in respect of services in that other State provided the services are performed in connection with his study, research or training or are incidental thereto.

3. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and is present in the other State solely as an employee of, or under contract with, the Government or an enterprise of the first-mentioned State solely for the purpose of acquiring technical, professional or business experience for a period not exceeding 12 months from the date of his first arrival in the other State in connection with that visit shall be exempt from tax in that other State on:

(a) all remittances from abroad for the purposes of his maintenance, education or training; and

(b) any remuneration not exceeding two thousand five hundred United States dollars for personal services rendered in that other State provided such services are in connection with his studies or training or are incidental thereto.

4. For the purposes of this Article the term "Government":

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

(i) the municipalities;

(ii) the statutory bodies; and

(iii) any institution wholly or mainly owned by the Government of Finland or the municipalities or the statutory bodies thereof, as may be agreed from time to time between the competent authorities of the Contracting States;

(b) 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; and

(v) such institutions, the capital of which is wholly or mainly owned by the Government of Malaysia or the governments of the States or the local authorities or the statutory bodies thereof, as may be agreed from time to time between the competent authorities of the Contracting States.

Article 20
OTHER INCOME

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

Article 21
ELIMINATION OF DOUBLE TAXATION

1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting State except where express provision to the contrary is made in this Agreement. Where income is subject to tax in both Contracting States relief from double taxation shall be given in accordance with the following paragraphs of this Article.

2. In Finland double taxation shall be eliminated as follows:

(a) Where a resident of Finland derives income which, in accordance with the provisions of the Agreement, may be taxed in Malaysia, Finland shall, subject to the provisions of subparagraph (b), allow as a deduction from the tax on income of that person, an amount equal to the tax on income paid in Malaysia. Such deduction shall not, however, exceed that part of the tax on income, as computed before the deduction is given, which is attributable to the income which may be taxed in Malaysia.

(b) Dividends paid by a company which is a resident of Malaysia to a company which is a resident of Finland shall be exempt from Finnish tax to the extent that the dividends would have been exempt from tax under Finnish taxation law if both companies had been residents of Finland.

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

3. In the case of Malaysia, 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, the amount of Finnish tax payable under the law of Finland and in accordance with the provisions of the Agreement, by a resident of Malaysia in respect of income from sources within Finland shall be allowed as a credit against Malaysian tax payable in respect of such income, but in an amount not exceeding the portion of Malaysian tax which such income bears to the entire income chargeable to Malaysian tax.

4. For the purposes of paragraph 2 of this Article, the term "tax on income paid in Malaysia" shall be deemed to include Malaysian tax which would, under the law of Malaysia and in accordance with the Agreement, have been payable on:

(a) any income derived from sources in Malaysia had the income not been exempted from Malaysian tax in accordance with:

(i) sections 54A, 54B, 60A, 60B and Schedule 7A of the Income Tax Act 1967 of Malaysia or sections 21, 22, 26, 30KA or 30Q of the Investment Incentives Act 1968 of Malaysia, so far as they were in force on, and have not been modified since, the date of signature of

the Agreement or have been modified only in minor respects so as not to affect their general character; or

(ii) any other provisions which may subsequently be agreed in an Exchange of Letters between the Governments of the Contracting States to be of a substantially similar character;

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

(c) approved industrial royalties to which paragraph 3 of Article 12 applies had those royalties not been exempted from Malaysian tax in accordance with that paragraph.

5. Where royalties derived by a resident of Finland are, as film rentals, subject to the cinematograph film hire duty in Malaysia, that duty shall, for the purposes of sub-paragraph (a) of paragraph 2 of this Article, be deemed to be Malaysian tax.

Article 22
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. This provision 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.

3. 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.

4. Moreover nothing contained 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 allowances, 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. In this Article the term "taxation" means taxes to which the Agreement applies.

Article 23
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. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement~~.

ARTICLE 16 OF THE MLI- MUTUAL AGREEMENT PROCEDURE

The following first sentence of paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph 1 of Article 23 of this Agreement:

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 following second sentence of paragraph 1 of Article 16 of the MLI replaces second sentence of paragraph 1 of Article 23 of this Agreement:

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. 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement. In particular, they may consult together for the purpose of reaching an agreement on the allocation of income in cases referred to in Article 9.

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. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a body consisting of representatives of the competent authorities of the Contracting States.

Article 24
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. The exchange of information is not restricted by Article 1. 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. They may disclose the information in public court proceedings or in judicial decisions.

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

(a) to carry out administrative measures at variance with the laws or the 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.

Article 25
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 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.

Article 26
ENTRY INTO FORCE

1. The Governments of the Contracting States shall notify each other that the constitutional requirements for the entry into force of this Agreement have been complied with.

2. The Agreement shall enter into force thirty days after the date of the later of the notifications referred to in paragraph 1 of this Article and its provisions shall have effect:

(a) in Finland:

(i) in respect of taxes withheld at source, to income derived on or after 1st January in the calendar year next following the year in which the Agreement enters into force;

(ii) in respect of other taxes on income, to taxes chargeable for any taxable year beginning on or after 1st January in the calendar year next following the year in which the Agreement enters into force;

(b) in Malaysia:

in respect of Malaysian tax for any year of assessment beginning on or after 1st January in the second calendar year following the year in which the Agreement enters into force.

Article 27
TERMINATION

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement through diplomatic channels, by giving written notice of termination on or before the Thirtieth day of June of any calendar year

following after the period of five years from the date on which the Agreement enters into force. In such event, the Agreement shall cease to have effect:

(a) in Finland:

(i) in respect of taxes withheld at source, to income derived on or after 1st January in the calendar year next following the year in which the notice is given;

(ii) in respect of other taxes on income, to taxes chargeable for any taxable year beginning on or after 1st January in the calendar year next following the year in which the notice is given;

(b) in Malaysia:

in respect of Malaysian tax for any year of assessment beginning on or after 1st January in the second calendar year following the year in which the notice is given.

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

Done in duplicate at Kuala Lumpur the 28th March 1984, in the Finnish 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 Finland

PROTOCOL

At the signing today of the Agreement between the Government of Finland 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 upon the following provisions which shall from an integral part of the Agreement:

1. Ad Articles 5, 6 And 7.

Under Finnish taxation law income from agriculture or forestry is treated as income from immovable property. Accordingly, income from agriculture or forestry carried on in Finland shall, in the case of Finland, for the purposes of the Agreement be treated as income from immovable property referred to in Article 6 of the Agreement.

Under Malaysian taxation law income from agriculture, or timber or other forest produce, is treated as business income. Accordingly, a farm or plantation, or a place of timber or other forest produce, shall, in the case of Malaysia, for the purposes of Article 7 of the Agreement be regarded as a permanent establishment referred to in Article 5 of the Agreement.

2. Ad Article 10.

Where, for the purposes of 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—

(a) 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 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,

the dividend shall be deemed to have been paid by a company resident in Malaysia;

(b) 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,

the dividend shall be deemed to have been paid by a company not resident in Malaysia.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate at Kuala Lumpur the 28th March 1984, in the Finnish 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 Finland