

P.U. (A) 113/1984
Signed: 19 April 1983 (Dhaka)
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**AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE
GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH 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 People's Republic of Bangladesh desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, 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. This Agreement shall apply to taxes on income imposed by each Contracting State irrespective of the manner in which they are levied.
2. The existing taxes to which this Agreement shall apply are:
 - (a) in the case of Bangladesh: the income tax;
(hereinafter referred to as "Bangladesh tax");
 - (b) in the case of Malaysia:
 - (i) the income tax and excess profit tax;
 - (ii) the supplementary income taxes, that is, tin profits tax, development tax and timber profits tax; and
 - (iii) the petroleum income tax;(hereinafter referred to as "Malaysian tax").
3. This Agreement shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes.

The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

Article 3

GENERAL DEFINITIONS

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

- (a) the term "Bangladesh" means the People's Republic of Bangladesh;
- (b) the term "Malaysia" means the Federation of Malaysia and includes any area adjacent to the territorial waters of Malaysia which, in accordance with international law, has been or may hereafter be designated under the laws of Malaysia as an area within which the rights of Malaysia with respect to the sea bed and sub-soil and their natural resources may be exercised;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Bangladesh or Malaysia, as the context requires;
- (d) the term "tax" means Bangladesh tax or Malaysian tax, as the context requires;
- (e) the term "person" shall have the meaning assigned to it in the taxation laws in force in the respective Contracting States;
- (f) the term "company" means any body corporate or any other entity which is treated as a company under the taxation laws of the respective Contracting States;
- (g) the terms "resident of a Contracting State" and "resident of the other Contracting State" mean a person who is a resident of Bangladesh or a person who is a resident of Malaysia, as the context requires;
- (h) 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;
- (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 "national" means any individual possessing the nationality or citizenship of a Contracting State and also any legal person, partnership,

association and any other entity deriving its status as such from the laws in force in a Contracting State;

(k) the term "competent authority" means:

- (i) in the case of Bangladesh, the National Board of Revenue or their authorised representative;
- (ii) in the case of Malaysia, the Minister of Finance or his authorised representative.

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

Article 4

RESIDENT

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

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

- (a) He shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) If the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) If he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) If he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

Article 5

PERMANENT ESTABLISHMENT

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

2. The term "permanent establishment" shall include especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse, in relation to a person providing storage facilities for others;
- (g) a mine, an oil or gas well, a quarry or other place of extraction of natural resources including timber or other forest produce;
- (h) a farm or plantation;
- (i) a building site or construction, installation or assembly project which exists for more than 183 days.

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

- (a) the use of facilities solely for the purposes of storage or display 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 or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purposes of processing by another enterprise;

- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
4. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if:
- (a) it carries on supervisory activities in that other State for more than 183 days in connection with a construction, installation or assembly project which is undertaken in that other State; or
 - (b) substantial equipment is used or installed in that other State by, for or under contract with, the enterprise.
5. A person acting in a Contracting State for or on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 6 of this Article applies) shall be deemed to be a permanent establishment in the first-mentioned State, if—
- (a) he has, and habitually exercises, in the first-mentioned State an authority to conclude contracts for or on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise, or
 - (b) he habitually maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders or delivers goods or merchandise for or on behalf of the enterprise, or
 - (c) he habitually secures orders for the sale of goods or merchandise in the first-mentioned State, wholly or almost wholly, for the enterprise itself, or for the enterprise or other enterprises which are controlled by it or have controlling interest in it.
6. 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, where such persons are acting in the ordinary course of their business and their activities do not fall within the scope of paragraph 5(c) of this Article.

7. 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 make either company a permanent establishment of the other.

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property may be taxed in the Contracting State in which such property is situated.
2. 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 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 any other form of immovable property.
4. 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.

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 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 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 deduction expenses, including executive and general administrative expenses, which would be deductible if the permanent establishment were an independent enterprise, in so far as such expenses are reasonably allocable to the permanent establishment, whether incurred in the State in which the permanent establishment is situated or elsewhere, but the deduction shall not include any expenses which, under the law of that State, are not allowed as deduction to an enterprise of that State.

4. 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 apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.

5. 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.

6. For the purposes of the preceding paragraphs of this Article, 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

AIR TRANSPORT

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

2. The provisions of paragraph 1 shall likewise apply in respect of income derived from participation in pools of any kind by enterprises engaged in air transport.

Article 9

SHIPPING

1. Income of an enterprise of a Contracting State derived from the operation of ships in international traffic in the other Contracting State may be taxed in that other State, but the tax chargeable in that other State on such income shall be reduced by an amount equal to fifty per cent of such tax.

2. The provisions of paragraph 1 shall likewise apply in respect of income derived from participation in pools of any kind by enterprises engaged in shipping operations.

Article 10

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 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, 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 11

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 Bangladesh to a resident of Malaysia may be taxed in Bangladesh according to the laws of Bangladesh but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

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

Provided that nothing in this paragraph shall affect the provisions of the Malaysian law under which the tax in respect of a dividend paid by a company 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.

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 assimilated to income from shares by the taxation laws of the State of which the company making the distribution is a resident.

5. The provisions of paragraphs 2 and 3 of this Article shall not apply if the recipient 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.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar 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 undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

7. The provisions of this Article shall not affect the taxation of the company on the profits out of which the dividends are paid.

Article 12

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 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 Bangladesh 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).

4. The term "interest" as used in this Article means income from debt-claims of very 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 prizes attaching to such securities, bonds or debentures, as well as other income assimilated to interest from money lent by the taxation laws of the State in which the income arises.

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

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or statutory body thereof, or a resident of that 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 beneficial owner or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the 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 State, due regard being had to the other provisions of this Agreement.

Article 13

ROYALTIES

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

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the laws of that State, but 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. Notwithstanding the provisions of paragraph 2, approved industrial royalties derived from Malaysia by a resident of Bangladesh who is the beneficial owner thereof shall be exempt from Malaysian tax.

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

- (i) the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or scientific work, or for the use of or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience;
- (ii) the use of, or the right to use, cinematograph films, or tapes for radio or television broadcasting, any copyright of literary or artistic work.

(b) The terms "approved industrial royalties" as used in this Article means royalties included in the definition in subparagraph 4(a)(i) 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:

- (i) manufacturing, assembling or processing;
- (ii) construction, civil engineering or ship-building; or
- (iii) electricity, hydraulic power, gas or water supply,

5. The provisions of paragraphs 1, 2 and 3 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.

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

7. 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 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 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 State, due regard being had to the other provisions of this Agreement.

Article 14

CAPITAL GAINS

1. Capital gains from the alienation of immovable property, as defined in paragraph 2 of Article 6 may be taxed in the Contracting State in which such property is situated.
2. Capital gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State.
3. Notwithstanding the provisions of paragraph 2 of this Article, capital gains derived by a resident of a Contracting State from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State.
4. Capital gains from the alienation of any property other than those mentioned in paragraphs 1, 2 and 3 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

Article 15

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State. However, in the following circumstances such income may be taxed in the other Contracting State:
 - (a) if his stay in the other State is for a period or periods amounting to or exceeding in the aggregate 183 days in the calendar year concerned; or
 - (b) if the remuneration for his services in the other State is either derived from residents of that State or borne by a permanent establishment

which a person not resident in that State has in that State and which in either case exceeds 3,000 United States dollars in the calendar year concerned, notwithstanding that his stay in that State is for a period or periods amounting to less than 183 days during that calendar year.

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

Article 16

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 17, 18, 19, 20, and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom shall be taxable in that other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year, and
- (b) the remuneration is paid by, or on behalf of an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in the State in which the place of effective management of the enterprise is situated.

Article 17

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 18

ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Articles 15 and 16 income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians and by athletes, from their personal activities as such shall be taxable in the Contracting State in which these activities are exercised. Provided that such income shall not be taxable in the said Contracting State if the visit of the public entertainers or athletes to that State is within the scope of a cultural or sports exchange programme agreed to by both the Contracting States.

2. Notwithstanding the provisions of Article 7, where the personal activities referred to in paragraph 1 are provided in a Contracting State by an enterprise of the other State, the profits derived from providing these activities by such an enterprise may be taxed in the first-mentioned State.

Article 19

PENSIONS

1. Subject to the provisions of paragraph 1 of Article 20, pensions, annuities and other similar remuneration paid to a resident of a Contracting State shall be taxable only in that State.

2. The term "pensions, annuities and other similar remuneration", as used in this Article means periodic payments made after retirement in consideration of past employment or by way of compensation for injuries received in connection with past employment.

Article 20

GOVERNMENTAL FUNCTIONS

1. Remuneration, including pensions paid by, or out of funds created by a Contracting State or a political sub-division or a local authority thereof, to any individual who is a citizen of that Contracting State in respect of services rendered to that State or sub-division or local authority thereof in the discharge of functions of a Governmental nature, shall be taxable only in that State.

2. The provisions of Articles 16, 17 and 19 shall apply to remuneration in respect of an employment in connection with any business carried on by a Contracting State or a political sub-division or a local authority thereof for the purpose of profits.

Article 21

TEACHERS, STUDENTS AND TRAINEES

1. An individual who is a resident of one of the Contracting States and who, at the invitation of the Government of the other Contracting State or of a university or other recognised educational institution situated in that other Contracting State, visits that other Contracting State for the primary purpose of teaching or engaging in research, or both, at a University or other recognized educational institution shall be exempt from tax in that other Contracting State on his income from personal services for teaching or research or both at the university or the recognised educational institution, for a period not exceeding two years from the date of his arrival in that other Contracting State.

2. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that other State solely as a student at a university, college, school or other similar educational institution in that other State or as a business or technical apprentice shall, from the date of his first arrival in that other State in connection with that visit, be exempt from tax for a period not exceeding five years in that other State:

- (a) on all remittances from abroad for purposes of his maintenance, education or training; and
- (b) on any remuneration for personal services rendered in that other Contracting State with a view to supplementing the resources available to him for such purposes.

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

- (a) on the amount of such grant, allowance or award; and
- (b) on all remittance from abroad for the purposes of his maintenance, education or training.

Article 22

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foreign Articles of this Agreement shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may be taxed in that other State.

Article 23

ELIMINATION OF DOUBLE TAXATION

1. Subject to the provision of the laws of Bangladesh regarding the allowance as a credit against Bangladesh tax of tax payable in a territory outside Bangladesh (which shall not affect the general principle hereof), tax payable under the laws of Malaysia and in accordance with this Agreement, whether directly or by deduction, on income from sources within Malaysia shall be allowed as a credit against any Bangladesh tax computed by reference to the same income by reference to which the Malaysian tax is computed.
2. For the purposes of paragraph 1 of this Article, the term "tax payable under the laws of Malaysia" shall be deemed to include:
 - (a) in respect of dividends received from a company which is a resident of Malaysia, an amount not exceeding 15 per cent of the gross amount of the dividends which would have been payable as Malaysian tax but for an exemption from tax granted under the Malaysian laws relating to tax incentives for the promotion of economic development in Malaysia which were in force on the date of signature of this Agreement or any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, these laws so far as they are agreed by competent authorities of the Contracting State to be of a substantially similar character;
 - (b) in the case of interest to which paragraph 3 of Article 12 applies, an amount not exceeding 15 per cent of the gross amount of the interest in respect of which Malaysian tax would have been payable but for the exemption granted in accordance with that paragraph;
 - (c) in the case of approved industrial royalties to which paragraph 3 of Article 13 applies, an amount not exceeding 15 per cent of the gross amount of the royalties in respect of which Malaysian tax would have been payable but for the exemption granted in accordance with that paragraph.

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

4. For the purposes of paragraph 3, the term "tax payable under the laws of Bangladesh" shall be deemed to include, as regards—

- (a) 15 per cent tax on dividends under paragraph 2 of Article 11,
- (b) 15 per cent tax on interest under paragraph 2 of Article 12, and
- (c) 15 per cent tax on royalties under paragraph 2 of Article 13, the amount of such tax which would have been payable but for the reduction of or exemption from tax in accordance with the special laws designed to promote economic development in Bangladesh effective on the date of signature of this Agreement or which may be introduced hereinafter in modification of, or in addition to the existing laws as agreed between the competent authorities of the Contracting States.

5. For the purposes of paragraph 1, where royalties derived by a resident of Bangladesh are, as film rentals, subject to cinematograph film-hire duty in Malaysia, that duty shall be deemed to be Malaysian tax.

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 and under the same conditions are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of 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 in the same circumstances and under the same conditions.

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 Contracting 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 in the same circumstances and under the same conditions.

4. Nothing contained in paragraphs 1, 2 and 3 of 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 which it grants to its own residents;
- (b) affecting any provisions of the tax laws of the respective Contracting States regarding the imposition of tax on non-resident persons as such; and
- (c) affecting any provisions of the tax laws of the respective Contracting States regarding any tax concessions granted to persons fulfilling specified conditions.

5. In this Article the term "taxation" means taxes which are the subject of this 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 this Agreement, he may notwithstanding the remedies provided by the national laws of those States, present the case to the competent authority of the Contracting State of which he is a resident. The case must be presented within three years from the date of assessment or of the withholding of tax at the source whichever is later.

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 an appropriate 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 not in accordance with this Agreement. If an agreement is reached, it shall be implemented notwithstanding any time limits prescribed in the tax laws of the Contracting States.

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying the provisions of this Agreement.

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information or document as is necessary for carrying out the provisions of this Agreement. Any information or documents so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of this Agreement or the determination of appeals or the prosecution of offences in relation thereto.

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 or the administrative practice of that or of the other Contracting State;
- (b) to supply particulars which are 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 or documents 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 27

DIPLOMATIC AND CONSULAR OFFICIALS

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

Article 28

ENTRY INTO FORCE

This Agreement shall come into force on the date when the last of all such things shall have been done in Bangladesh and Malaysia as are necessary to give the Agreement the force of law in Bangladesh and Malaysia respectively, and shall

thereupon have effect for any year of assessment commencing on or after the first day of January, 1982.

Article 29

TERMINATION

This Agreement shall continue in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year after the year 1986 give notice of termination to the other Contracting State and, in such event this Agreement shall cease to be effective for any year of assessment commencing 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, being duly authorised thereto by their respective Governments have signed this Agreement.

DONE at Dhaka this 19th day of April 1983 in three originals, each in Bahasa Malaysia, Bangla and English languages, all texts being equally authentic. In the case of any divergence of interpretation, the English text shall prevail.

PROTOCOL

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

2. In connection with Article 7 "Business Profits":

Nothing in this Agreement shall affect the operation of any law of a Contracting State relating to the taxation of income or profits from any insurance business provided that if the relevant law in force in either Contracting State at the date of signature of this Agreement is amended (otherwise than in minor respects so as not to affect its general character) the States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

3. In connection with Article 11 "Dividends":

(1) If after the date of signature of the Agreement the system of taxation in Malaysia applicable to the income and distributions of companies is altered by the introduction of corporation tax (for which no credit or only partial credit is given to the shareholders) and further dividend tax, then Malaysian tax

chargeable on dividends paid to a resident of Bangladesh shall not exceed 15 per cent of the gross amount of the dividends.

(2) 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.

4. In connection with Article 14 "Capital Gains":

For the purposes of Article 14 shares of a company the property of which consists principally of immovable property situated in Bangladesh shall be deemed to be immovable property situated therein.

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

DONE at Dhaka this 19th day of April 1983 in three originals, each in Bahasa Malaysia, Bangla and English languages, all texts being equally authentic. In the case of any divergence of interpretation, the English text shall prevail.