SCHEDULE

PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF MALAYSIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME SIGNED AT LONDON ON 30 MARCH 1973

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Malaysia;

Desiring to conclude a Protocol to amend the Agreement between the Contracting Governments for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at London on 30 March 1973 (hereinafter referred to as "the Agreement");

Have agreed as follows:

Article 1

Article I of the Agreement shall be amended by:

(a) substituting for sub-paragraph (a) of paragraph (1), the following:

"(a) in Malaysia:

(i) the income tax and excess profit tax; and

(ii) the supplementary income tax, that is, development tax

(hereinafter referred to as "Malaysian tax");"

(b) deleting the words "(including surtax)" in sub-paragraph (b)(i) of paragraph (1).

Article 2

Article II of the Agreement shall be amended by:

(a) substituting for sub-paragraph (g) of paragraph (1) the following:

"(g) the term "person" includes an individual, a company and any other body of persons;"

(b) substituting for sub-paragraph (i) (ii) (aa) of paragraph (1) the following:

"(aa) any British citizen or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided that he has the right of abode in the United Kingdom;"

Article 3

Article III of the Agreement shall be amended by substituting for sub-paragraph (a) of paragraph (1) the following:

"(a) the term "resident of Malaysia" means a person who is resident in Malaysia for the purpose of Malaysian tax;"

Article 4

Article IX of the Agreement shall be amended by substituting for paragraph (6) the following:

"(6) The provisions of paragraphs (2) and (3) or, as the case may be, paragraph (5) of this Article shall not apply where a resident of one of the Contracting States has in the other Contracting State a permanent establishment or a fixed base and the holding by virtue of which the dividends are paid

is effectively connected with the business carried on through such permanent establishment or the independent personal services performed from such fixed base. In such case the provisions of Article VI or Article XIVA, as the case may be, shall apply."

Article 5

Article X of the Agreement shall be amended by:

(a) deleting the words "by Act A 98 of 1972" in paragraph (2);

(b) substituting for paragraph (4) the following:

"(4) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated."

(c) substituting for paragraph (5) the following:

"(5) The provisions of paragraphs (1) and (2) of this Article shall not apply if the recipient of the interest, being a resident of one of the Contracting States, has in the other Contracting State from which the interest is derived a permanent establishment or fixed base with which the indebtedness from which the interest arises is effectively connected. In such case the provisions of Article VI or Article XIVA, as the case may be, shall apply."

Article 6

Article XI of the Agreement shall be amended by:

(a) substituting for paragraph (4) the following:

"(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the recipient of the royalties, being a resident of one of the Contracting States, has in the other Contracting State from which the royalties are derived a permanent establishment or fixed base with which the right or property giving rise to the royalties is effectively connected. In such case the provisions of Article VI or Article XIVA, as the case may be, shall apply."

(b) substituting for paragraph (6) the following:

"(6) Royalties shall be deemed to arise in a Contracting State where the payer is that State itself, a political subdivision, a local authority 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 or fixed base in connection with which the obligation to pay the royalties was incurred and the royalties are borne by that permanent establishment or fixed base, then the royalties shall be deemed to be derived from the Contracting State in which the permanent establishment or fixed base is situated."

Article 7

The following new Article shall be inserted immediately after Article XI of the Agreement:

"Article XIA

Technical fees

(1) Technical fees derived from one of the Contracting States by a resident of the other Contracting State who is the beneficial owner thereof and is subject to tax in that other State in

respect thereof may be taxed in the first-mentioned Contracting State at a rate not exceeding 10 per cent of the gross amount of the technical fees.

(2) The term "technical fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.

(3) The provisions of paragraph (1) of this Article shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the technical fees are effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article VI or Article XIVA, as the case may be, shall apply.

(4) Technical fees shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by such permanent establishment or fixed base, then such technical fees shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

(5) 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 technical fees paid exceeds, for whatever reason, 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 law of each Contracting State, due regard being had to the other provisions of this Agreement."

Article 8

Article XIV of the Agreement shall be amended by:

(a) substituting for sub-paragraph (c) of paragraph (1) the following:

"(c) the income is not directly deductible from the income of a permanent establishment or fixed base which the person has in Malaysia."

(b) substituting for sub-paragraph (c) of paragraph (2) the following:

"(c) the income is not directly deductible from the income of a permanent establishment or fixed base which the person has in the United Kingdom."

Article 9

The following new Article shall be inserted immediately after Article XIV of the Agreement:

"Article XIVA

Independent personal services

(1) Subject to the provisions of Article XIA, income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

(a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case so much of the income as is attributable to that fixed base may be taxed in that other State; or

(b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 120 days in any period of 12 months; in that case so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

(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 10

Article XV of the Agreement shall be amended by substituting the following new Article:

"Article XV

Artistes and athletes

(1) Notwithstanding the provisions of Articles XIV and XIVA 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 VI, XIV and XIVA, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, income derived from such activities as are referred to in paragraph (1) shall be exempt from tax in the Contracting State in which the activities are exercised, if the visit to that State is directly or indirectly supported, wholly or substantially, from public funds of the other State."

Article 11

Article XIX of the Agreement shall be amended by substituting for paragraph (2) the following:

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

Article 12

Article XXI of the Agreement shall be amended by:

(a) substituting for sub-paragraph (a)(i) of paragraph (5) the following:

"(i) Sections 22, 23, 29, 32 and 33 of the Promotion of Investments Act 1986 of Malaysia and Section 45 of that Act to the extent that it relates to Sections 21, 22 and 26 of the Investment Incentives Act 1968 as well as Section 34 of that 1968 Act to the extent that it relates to Sections 19 and 20 of the Pioneer Industries (Relief from Income Tax) Ordinance 1958, so far as the Sections were in force on, and have not been modified since, the date of signature of this Protocol or have been modified only in minor respects so as not to affect their general character; or"

(b) substituting for sub-paragraph (b) of paragraph (5) the following:

"(b) in the case of interest to which paragraph (2) of Article X applies, and provided that the loan or other indebtedness in question in respect of which the interest is paid is certified by the competent authority of Malaysia as being for the purpose of promoting industrial, commercial, scientific or educational development in Malaysia, an amount not exceeding a sum equivalent to tax at a rate of 15 per cent on the gross amount of the interest in respect of Malaysian tax which would have been payable but for the exemption from tax granted under paragraph 27 of Part I of Schedule 6 to the Income Tax Act 1967 of Malaysia; or"

Article 13

(1) Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Protocol which shall form an integral part of the Agreement. This Protocol shall enter into force on the date of the later of these notifications and, subject to the provisions of paragraphs (2) and (3) of this Article, shall thereupon have effect:

(a) in relation to payments referred to in Article 7 of this Protocol, to amounts paid on or after 1 January 1986;

(b) in relation to all other provisions of this Protocol:

(i) in Malaysia:

as respects Malaysian tax, for any year of assessment beginning on or after 1 January 1987;

(ii) in the United Kingdom:

(aa) as respects income tax and capital gains tax, for any year of assessment beginning on or after 6 April 1987;

(bb) as respects corporation tax, for any financial year beginning on or after 1 April 1987.

(2) Where any provision of the Agreement would have afforded any greater relief from tax than is due under this Protocol, any such provision as aforesaid shall continue to have effect:

(a) in Malaysia, for any year of assessment, and

(b) in the United Kingdom for any year of assessment or financial year beginning, in either case, before the entry into force of this Protocol.

(3) This Protocol shall cease to be effective at such a time as the Agreement ceases to be effective in accordance with Article XXVII of the Agreement.