

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE STATE OF ISRAEL FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

Signed at Jerusalem February 7, 1999

Entered into force June 19, 2003

The Government of the Republic of Korea and the Government of the State of Israel (hereinafter referred to as the "Contracting Parties"),

DESIRING to intensify economic cooperation to the mutual benefit of both countries,

INTENDING to create favorable conditions for greater investments by investors of one Contracting Party in the territory of the other Contracting Party, and

RECOGNIZING that the promotion and reciprocal protection of investments on the basis of the present Agreement will be conducive to the stimulation of individual business initiative and will increase prosperity in both States,

HAVE AGREED as follows:

Article 1

Definitions

For the purpose of the present Agreement:

1. The term "investments" shall comprise any kind of assets, implemented in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, including, but not limited to:

- a) movable and immovable property as well as any other rights in rem, in respect of every kind of asset;
- b) rights derived from shares, debentures, bonds and other kinds of interests in companies;
- c) claims to money and other assets and to any performance having an economic value;
- d) intellectual property rights including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, technical processes, trade secrets, know-how and goodwill;
- e) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources; and
- f) goods leased under contract with funds which carry the right of repatriation, title to which is transferred to the lessee at the end of the lease term.

2. A change in the form in which assets are invested or reinvested, in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, does not affect their character as investments within the meaning of this Agreement.

3. The term "investor" shall comprise:

With respect to investments made in the Republic of Korea:

- a) natural persons who are nationals of the State of Israel and who are not also nationals of the Republic of Korea; or
- b) companies including corporations, firms or associations incorporated or constituted in accordance with the law of the State of Israel.

With respect to investments made in the State of Israel:

- a) natural persons who are nationals of the Republic of Korea and who are not also nationals or permanent residents of the State of Israel; or
- b) companies including corporations, firms or associations incorporated or constituted in accordance with the law of the Republic of Korea.

4. The term "returns" shall comprise the amount yielded by an investment including but not limited to: income, dividends, profits, sums received from the total or partial liquidation of an investment, interest, capital gains, royalties or fees.

5. The term "territory" shall mean with respect to the Republic of Korea or the State of Israel, the territory of that State including the territorial sea, as well as the continental shelf and the exclusive economic zone over which the State concerned exercises sovereign rights or jurisdiction in conformity with international law.

6. The term "Freely Convertible Currency" shall mean any currency that is widely used to make payments for international transactions and that is widely exchanged in the principal international exchange markets.

Article 2

Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. Investments made by investors of each Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investment in its territory of investors of the other Contracting Party.

Article 3

Most Favored Nation and National Treatment

1. Each Contracting Party shall, in its territory, accord to investments or returns of investors of the other Contracting Party fair and equitable treatment which shall be no less favorable than that which it accords to investments or returns of its own investors or to investment or returns of investors of any third State.

2. Each Contracting Party shall, in its territory, accord to investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, fair and equitable treatment which shall be no less favorable than that which it accords to its own investors or to investors of any third State.

3. The provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the

other the benefit of any treatment, preference or privilege relating to taxation or resulting from:

- a) any existing or future customs union, free trade area agreement or similar international agreement to which either Contracting Party is or may become a party;
- b) the definition of "investment" and reference to "reinvestment" and provision of "repatriation of investments and returns" referred to in the bilateral investment Agreements between the State of Israel and third states concluded prior to January 1, 1992.

Article 4

Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot or other such similar activity in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favorable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable, without undue delay.

2. Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses or damage in the territory of the other Contracting Party, resulting from:

- a) requisitioning of their property by its forces or authorities, or
- b) destruction of their property by its forces or authorities, which was not caused in combat action or was not required by the necessity of the situation, shall be accorded restitution or adequate compensation no less favorable than that which would be accorded under the same circumstances to its own investors or to investors of any third State. Resulting payments shall be freely transferable, without undue delay.

Article 5

Expropriation

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter:

"expropriation") in the territory of the other Contracting Party, except for a public purpose related to the internal needs of that Contracting Party on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest from the date of expropriation until the date of payment, according to the laws and regulations of the Contracting Party where the expropriation takes place, shall be made without delay, be effectively realizable and be freely transferable. The investors affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment, in accordance with the principles set out in this paragraph.

2. Where a Contracting Party expropriates the assets of a company, which is incorporated or constituted under its laws and

regulations, and in which investors of the other Contracting Party own shares or other forms of participation, the provisions of this Article shall be applied.

Article 6

Repatriation of Investments and Returns

Each Contracting Party shall, in respect of investment, guarantee to investors of the other Contracting Party the unrestricted transfer of their investments and returns in accordance with the following:

1. Transfers shall be effected without undue delay in any freely convertible currency as designated by the investor.
2. Unless otherwise agreed by the investor, transfers shall be made at the rate of exchange applicable on the date of transfer. Such transfers shall include, in particular though not exclusively:
 - a) net profit, capital gains, dividends, interest, royalties, fees and any other current income accruing from investments;
 - b) proceeds accruing from the total or partial liquidation of investments;
 - c) funds in repayment of loans related to investments;
 - d) earnings of nationals of the other Contracting Party who are allowed to work in connection with investments in the territory of the first Contracting Party, in conformity with existing laws and regulations;
 - e) additional funds necessary for the maintenance or development of the existing investments; and
 - f) compensation pursuant to Article 4 and 5 of this Agreement.

Article 7

Disputes between a Contracting Party and an Investor of the Other Contracting Party

1. Any dispute between a Contracting Party and an investor of the other Contracting Party, including disputes concerning expropriation, shall, as far as possible, be settled by the parties to the dispute in an amicable way.
2. The local remedies under the laws and regulations of the Contracting Party in whose territory the investment was made shall be available to the investor of the other Contracting Party on a basis no less favorable than that accorded to its own investors or investors of any third State.
3. If the dispute cannot be settled within six(6) months from the date on which the dispute was raised by either party, it shall be submitted, upon request of either party, to the International Centre for Settlement of Investment Disputes(hereinafter referred to as the "Centre") for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Dispute between States and Nationals of Other States opened for signature at Washington on 18 March 1965. Each Contracting Party hereby consents to the jurisdiction of the Centre.
4. The award made by the Centre shall be final and binding on the parties to the dispute. Each Contracting Party shall ensure the recognition and enforcement of the award in accordance with its relevant laws and regulations.

Article 8

Disputes Between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel, which may include, if both Contracting Parties so desire, referral to a Bilateral Commission composed of representatives of both Contracting Parties.
2. If a dispute between the Contracting Parties cannot thus be settled within six(6) months from notification of the dispute, it shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.
3. Such an arbitral tribunal shall be constituted for each individual case in the following way: Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who, on approval by the two Contracting Parties, shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.
4. If, within the periods specified in paragraph (3) of this Article, the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the Secretary-General of the Centre to make any necessary appointments. If the Secretary-General is prevented from discharging the said function, then the Deputy Secretary-General shall be invited to make the necessary appointments. If the Deputy Secretary-General is prevented from discharging the said function, the member of the Centre next in seniority shall be invited to make the necessary appointments.
5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal shall determine its own procedure.

Article 9

Subrogation

1. If one Contracting Party or its designated Agency(hereinafter referred to as the "First Contracting Party") makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party (hereinafter referred to as the "Second Contracting Party"), the Second Contracting Party shall recognize:
 - a) the assignment to the First Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified; and
 - b) that the First Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified, and shall assume the obligations related to the investment.
2. The First Contracting Party shall be entitled in all circumstances to:
 - a) the same treatment in respect of the rights, claims and obligations acquired by it, by virtue of the assignment; and
 - b) any payments received in pursuance of those rights and claims, as the party indemnified was entitled to receive by virtue of this Agreement, in respect of the investment concerned and its related returns.

Article 10
Application of Other Rules

1. If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favorable than is provided for by the present Agreement, such rules shall to the extent that they are more favorable prevail over the present Agreement.

2. If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other specific provisions or contracts is more favorable than that accorded by this Agreement, the more favorable treatment shall be accorded.

Article 11
Application to Investment

The provisions of this Agreement shall apply to the rights and obligations of both Contracting Parties with respect to investments made on or before the entry into force of this Agreement.

Article 12
Entry into Force

Each Contracting Party shall notify the other Contracting Party through the diplomatic channel of the completion of the ratification procedures required for bringing this Agreement into force. This Agreement shall enter into force on the date of the latter notification.

Article 13
Duration and Termination

This Agreement shall remain in force for a period of 10 years. If twelve months before the expiration of the 10 year period neither Contracting Party notifies the other Contracting Party in writing of its decision to terminate this Agreement, then this Agreement shall continue in force until the expiration of 12 months from the date on which either Contracting Party shall have given written notice of termination to the other. In respect of investments made while this Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of 10 years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

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

Done in duplicate in the Korean, Hebrew and English languages, all texts being equally authentic, at Jerusalem this 7th day of February 1999, which corresponds to the 21st day of Shvat 5759 in the Jewish calendar. In the event of divergence in interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF THE STATE OF ISRAEL

PROTOCOL

On signing the Agreement between the Government of the Republic of Korea and the Government of the State of Israel for the Reciprocal Promotion and Protection of Investments, the undersigned have, in addition, agreed on the following provisions, which shall be regarded as an integral part of the said Agreement.

AD. Article 6:

Unrestricted transfer of investments and returns shall be guaranteed, provided that requirements and limitations as described below are respected. Such requirements and limitations shall not impair the free and undelayed transfer.

- a) Transfers shall be effected only after the investor has fulfilled all fiscal obligations of the Contracting Party where the investments were made and has complied with all the provisions of the exchange regulations.
- b) As of May 1998, the only limitation on foreign investments in Israel relates to transactions in derivatives made with the residents. The Government of Israel reserves the right to make amendments to the foreign exchange control regulations. However, it assures that changes in the regulations cannot adversely affect the rights of investors to repatriate investments and returns, once those investments have been made, and that the investors can only benefit from changes in the foreign exchange regulations.

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

Done in duplicate in the Korean, Hebrew and English languages, all texts being equally authentic, at Jerusalem this 7th day of February 1999, which corresponds to the 21st day of Shvat 5759 in the Jewish calendar. In the event of divergence in interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF THE STATE OF ISRAEL