

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

Signed at Seoul October 23, 1996
Entered into force January 26, 1997

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

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

Intending to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party, and

Conscious that the promotion and reciprocal protection of investments, according to the present Agreement, stimulates the business initiative in this field,

Have agreed as follows:

ARTICLE 1 Definitions

For the purposes of this Agreement:

(1) The term "investments" shall comprise every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and shall include, in particular, though not exclusively:

- (a) movable and immovable property as well as any other property rights in rem such as mortgages, liens, pledges, and similar rights;
- (b) shares, stocks and debentures of companies or any other form of participation in a company;
- (c) claims to money or to any performance under contract having an economic value;
- (d) intellectual property rights, including copyrights, trade marks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill;
- (e) any right conferred by laws or under contract and any licenses and permits pursuant to law, including the concessions to search for, extract, cultivate or exploit natural resources;
- (f) goods that, under a leasing contract, are placed at the disposal of a lessee.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment.

(2) The term "investor" shall mean any natural or legal person of one Contracting Party who invests in the territory of the other Contracting Party.

- (a) The term "natural person" shall mean any natural person having the nationality of either Contracting Party in accordance with its laws.
- (b) The term "legal person" shall mean with respect to either Contracting Party, any companies, organizations, corporations or associations incorporated or constituted in accordance with its laws.

(3) The term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties or fees.

(4) The term "territory" shall mean the territory of a Contracting Party including the territorial sea, as well as those maritime areas adjacent to the outer limit of the territorial sea over which a Contracting Party exercises or will exercise sovereign rights or jurisdiction in accordance with international law.

(5) The term "freely convertible currency" means the currency that is widely used to make payments for international transactions and widely exchanged in principal international exchange markets.

ARTICLE 2

Promotion and Protection of Investments

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

(2) Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

(3) Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the operation, management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.

(4) Each Contracting Party shall observe any obligation it may have entered into consistently with this Agreement with regard to investments in its territory by investors of the other Contracting Party.

ARTICLE 3

Treatment of Investments

(1) Each Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting Party treatment which is fair and equitable and not less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State, whichever is more favourable.

(2) Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investments, treatment which is fair and equitable and not less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable.

(3) The provisions of paragraph (1) and (2) 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 which may be extended by the former Contracting Party by virtue of:

- (a) agreements establishing customs unions, free trade areas or monetary unions to which either of the Contracting Parties is or may become a party;
- (b) any international agreement or arrangement relating wholly or mainly to taxation.

ARTICLE 4

Compensation for Losses

(1) When investments by investors of either Contracting Party suffer losses owing to war, armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable 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 in a freely convertible currency without delay.

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

(a) requisitioning of their property by its forces or authorities,
(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 just and adequate compensation no less favourable than that would be accorded under the same circumstances to an investor of the other Contracting Party or to an investor of any third State. Resulting payments shall be freely transferable in a freely convertible currency without 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 referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose. The expropriation shall be carried out under due process of law, on a non-discriminatory basis and shall be accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the fair market value of the investment expropriated immediately before expropriation or before impending expropriation became public knowledge, whichever is the earlier, shall include interest at the applicable commercial rate from the date of expropriation until the date of payment and shall be made without undue delay, be effectively realizable and be freely transferable in a freely convertible currency. In both expropriation and compensation, treatment not less favourable than that which the Contracting Party accords to its own investors or to investors of any third State shall be accorded.

(2) The investor 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 its case and of the valuation of its investment in accordance with the principles set out in this Article.

(3) 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 participate or own shares or debentures, the provision of this Article shall be applied.

ARTICLE 6

Transfers

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of their investments and returns. 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 sale or 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 its territory;
- (e) additional funds necessary for the maintenance or development of the existing investments;
- (f) amounts spent for the management of the investment in the territory of the other Contracting Party or a third State;
- (g) compensation pursuant to Article 4 and 5.

(2) All transfers under this Agreement shall be made in a freely convertible currency, without undue restriction and delay, at the exchange rate which is effective for the current transactions or determined in accordance with the official rate of exchange in force on the date of transfers, whichever is more favourable to investors.

ARTICLE 7

Subrogation

(1) If a Contracting Party or its designated agency makes payment to its own investors under a guarantee it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) the assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the investor to the former Contracting Party or its designated agency, as well as,
(b) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor.

(2) The subrogated rights or claims shall not exceed the original rights or claims of the investor.

ARTICLE 8

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

(1) Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party including expropriation or nationalization of investments 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 one Contracting Party in the territory of which the investment has been made are available for investors of the other Contracting Party on the basis of treatment no less favourable than that accorded to investments of its own investors or investors of any third State, whichever is more favourable to investors.

(3) If the dispute cannot be settled within six(6) months from the date on which the dispute has been raised by either party, it shall be submitted upon request of either of the parties, to the International Centre for Settlement of Investment Disputes(ICSID) established by the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States in the event the Republic of Latvia becomes a party to this Convention. Until that moment the dispute shall be submitted to conciliation or arbitration procedure to be mutually agreed upon on the basis of the Convention or Additional Facility.

(4) The award made by ICSID 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 9

Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled amicably through diplomatic channels.

(2) If the dispute cannot be thus settled within six(6) months, it shall upon the request of either Contracting Party, be submitted to an Arbitral Tribunal in accordance with the provisions of this Article.

(3) The Arbitral Tribunal shall be constituted for each individual case in the following way. Within two(2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. These two members shall then select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three(3) 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, a request may be made to the President of the International Court of Justice to make the appointments. If he happens to be a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointments. If the Vice-President also happens to be a national of either Contracting Party or is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the appointments.

(5) The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The Arbitral Tribunal may, however, decide that a higher proportion of the costs shall be borne by one of the two Contracting Parties and this award shall be binding on both Contracting Parties. The Arbitral Tribunal shall determine its own procedure.

ARTICLE 10

Application of Other Rules and Special Commitments

(1) Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting Parties are parties, nothing in this Agreement shall prevent either Contracting Party or any of its investors who own investments in the territory of the other Contracting Party from taking advantage of whichever rules are more favourable to his case.

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

(3) Either Contracting Party shall observe any other obligation it may have entered into with regard to investments in its territory by investors of the other Contracting Party.

ARTICLE 11

Application of the Agreement

This Agreement shall apply to investments whether made before or after its entry into force, but shall not apply to any dispute concerning investments which was settled before its entry into force.

ARTICLE 12

Entry into Force, Duration and Termination

(1) This Agreement shall enter into force thirty(30) days after the date when the Contracting Parties notify each other that all legal requirements for its entry into force have been fulfilled.

(2) This Agreement shall remain in force for a period of ten(10) years and shall continue to be in force thereafter for further periods of ten(10) years unless, one year before the expiry of the initial or any subsequent periods, either Contracting Party notifies the other in writing of its intention to terminate this Agreement.

(3) In respect of investments made prior to the termination of this Agreement, the provisions of Article 1 to 11 of this Agreement shall remain in force for a further period of twenty(20) years from the date of the termination.

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

DONE in duplicate at Seoul on the 23rd day of October 1996, in the Korean, Latvian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF THE REPUBLIC OF LATVIA