

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE MONGOLIAN PEOPLE'S REPUBLIC ON THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Korea and the Government of the Mongolian People's Republic (hereinafter referred to as "the Contracting Parties"),

Bearing in mind the friendly and cooperative relations existing between the two States and their peoples,

Intending to encourage and create favourable conditions for investments by investors of one State in the territory of the other State on the basis of equality and mutual benefit,

Recognising that the mutual promotion and protection of investments on the basis of this Agreement, shall stimulate business initiative in this field,

Have agreed as follows:

Article 1

Definitions

For the purposes of this Agreement:

(1) the term "investments" shall mean every kind of asset, and in particular though not exclusively, includes;

(a) movable and immovable property and any other property rights such as mortgages, liens or pledges;

(b) shares, stocks and debentures of companies or interests in the property of such companies;

(c) claims to money or to any performance under contract having an economic value;

(d) industrial and intellectual property rights, including rights with respect to copyrights, patents, trademarks, tradenames, industrial designs, trade secrets, technical processes and know-how and goodwill;

(e) business concessions of economic value necessary for conducting economic activities, conferred by law or under contract, including concessions to search for, cultivate, extract and exploit natural resources.

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

(2) the term "returns" shall mean the amount yielded by an investment, and in particular, though not exclusively, shall include profits, interests, dividends, royalties, fees or other current incomes.

(3) the term "investor" shall mean, with respect to either Contracting Party;

(a) natural persons having the nationality of that Contracting Party in accordance with its laws,

(b) any companies, firms, organizations and associations incorporated or

constituted in accordance with the laws of that Contracting Party provided that the natural persons, companies, firms, organizations and associations are competent in accordance with the laws of that Contracting Party to make investment in the territory of the other Contracting Party.

(4) the term "territory" shall mean:

(a) with respect to the Republic of Korea, the territory over which the Republic of Korea has sovereignty or jurisdiction;

(b) with respect to the Mongolian People's Republic, the territory over which the Mongolian People's Republic has sovereignty or jurisdiction.

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

Article 2

Promotion and Protection of Investments

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

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

Article 3

National and Most Favoured Nation Treatment

(1) Investments made by investors of one Contracting Party in the territory of the other Contracting Party, as also the returns therefrom, shall be accorded treatment which is fair and equitable and not less favourable than that accorded to the investments and returns of the investors of the latter Contracting Party or of any third State.

(2) Each Contracting Party shall in its territory accord to investors of the other Contracting Party as regards the management, 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 the investors of any third State.

Article 4

Compensation for Losses

Investors of one Contracting Party, whose investments in the territory of the other Contracting Party suffered losses owing to war or armed conflict, state of emergency or other similar events shall, as regards compensation or other forms of settlement, be accorded by the latter Contracting Party treatment not less favourable than that which the latter Contracting Party accords to its own investors or to the investors of any third State. Any payment made under this Article shall be freely transferable.

Article 5

Expropriation

(1) Investments made by investors of one Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation 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 on a non-discriminatory basis in accordance with legal procedures and against compensation.

(2) Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge and shall include interest from the date of expropriation and be freely transferable. Compensation shall be effective, adequate and be paid out without undue delay.

(3) The investor whose investment was expropriated, shall have the right under the law of expropriating Contracting Party to prompt review by a judicial or other appropriate authority of that Contracting Party of his case and of valuation of his investment in accordance with the principles set out in this paragraph.

(4) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, the provisions of paragraph (1) of this Article shall be applied.

Article 6

Reparation of Investment and Returns

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party, in respect of the investment, the transfer in freely convertible currency of:

(a) the net profits, dividends, royalties, technical assistance and technical service fees, interest and other current income, accruing from any investment by an investor of the other Contracting Party;

(b) the proceeds accruing from the sale or the total or partial liquidation of any investment made by an investor of the other Contracting Party;

(c) funds in repayment of borrowings;

(d) an adequate portion of the earnings of nationals of the other Contracting Party who are allowed to work in connection with an investment in its territory;

(e) amounts spent for the management of the investment in the territory of the other Contracting Party or a third State; and

(f) additional funds necessary for the maintenance of the investment.

(2) Transfer of proceeds mentioned in paragraph (1) of this Article may be effected under the condition that the transferred convertible currency originates in the investment or in its returns.

(3) Each Contracting Party shall take, after fulfilment of the legal obligations pertaining to the investors, the necessary steps in order to ensure the execution without delay of

the transfers mentioned in paragraph (1) of this Article.

(4) For the purpose of this Agreement, exchange rate shall be the rate applicable on the date of transfer pursuant to the exchange regulations in force of the Contracting Party in whose territory the investment was made.

Article 7

Exceptions

The provisions of this Agreement relative to the granting of treatment not less favourable than that accorded to the investors of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

- (a) any existing or future customs union or free trade area or common external tariff area or monetary union or similar international agreement or other forms of regional cooperation to which either of the Contracting Parties is or may become a Party;
- (b) any international agreement or domestic legislation relating wholly or mainly to taxation.

Article 8

Subrogation

(1) If a Contracting Party or its designated agency makes a payment to the benefit of its own investor under an indemnity given in respect of an investment or any part thereof in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

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

(2) The former Contracting Party or its designated agency shall, accordingly, be entitled to assert, if it so desires, any such right or claim to the same extent as its predecessor in title.

(3) If the former Contracting Party acquires amounts in the lawful currency under this Article, such amounts and credits shall be freely available to the former Contracting Party for the purpose of meeting its expenditure in the territory of the latter Contracting Party.

Article 9

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

(1) Any dispute between either Contracting Party and the investor of the other Contracting Party including expropriation or nationalization of an investment shall as far as possible be settled by the disputing parties in an amicable way.

(2) The legal remedies under the laws and regulations of one Contracting Party in the territory of which the investment has been made are available for the investor 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 the investor.

(3) If any dispute cannot be settled within six (6) months from the date either Party requested amicable settlement, it shall, upon request of either the investor or the Contracting Party, be submitted to the International Centre for the Settlement of Investment Disputes established by the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States, on condition that the Mongolian People's Republic 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 Washington Convention.

(4) Nothing in this Article shall be construed to prevent the parties to the dispute from agreeing upon any other form of arbitration or dispute settlement which they mutually prefer and agree best suits their particular needs.

Article 10

Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, if possible, be settled through diplomatic channels.

(2) If a dispute between the Contracting Parties cannot be settled after six (6) months, it shall, upon request of either Contracting Party, be submitted to an arbitral tribunal.

(3) The 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.

The appointed members shall then select a citizen of a third State, who on the approval of the two Contracting Parties shall be appointed as the Chairman of the tribunal.

The Chairman shall be appointed within two months from the date of appointment of the other 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 other agreements, invite the President of the International Court of Justice to make such appointments. If the President is a citizen of either Contracting Party or if he otherwise is prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments.

If the Vice-President is a citizen of either Contracting Party or if he too is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a citizen of either Contracting Party 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

costs of its own member of the tribunal and of its representation in the arbitral proceedings; the costs of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 11

Application of the Agreement

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

Article 12

Entry into Force, Duration and Termination

(1) This Agreement shall enter into force on 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 years and continue in force thereafter unless either Contracting Party notifies in writing six months in advance of its intention to terminate this Agreement.

(3) This Agreement may be revised by mutual consent. Any revision or termination of this Agreement shall be effected without prejudice to any right or obligation accruing or incurred under this Agreement prior to the effective date of such revision or termination.

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

DONE in duplicate at Seoul this 28th day of March 1991 in the Korean, Mongolian 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 MONGOLIAN PEOPLE'S REPUBLIC