

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE KINGDOM OF THAILAND FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

Signed at Bangkok March 24, 1989

Entered into force September 30, 1989

The Government of the Republic of Korea and the Government of the Kingdom of Thailand;

Desiring to create favourable conditions for greater economic cooperation between them and, in particular, for the investment of capital by nationals and companies of one State in the territory of the other State;

Recognizing that the encouragement of such investment of capital and the reciprocal protection of investments under international agreement will be conducive to the stimulation of individual business initiative and will increase prosperity in both States:

Have agreed as follows:

Article 1

For the purposes of this Agreement:

(1) the term "national" shall mean:

(a) in relation to the Republic of Korea, physical persons who are deemed to be national of the Republic of Korea, in accordance with its laws;

(b) in relation to the Kingdom of Thailand, any person who possesses Thai nationality under the law in force in the Kingdom of Thailand;

(2) the term "companies" shall mean:

(a) in relation to the Republic of Korea, juridical persons or companies or associations whether or not for pecuniary profit incorporated in the Republic of Korea and existing in accordance with its law;

(b) in relation to the Kingdom of Thailand, juridical persons incorporated or constituted under the law in force in the Kingdom of Thailand whether or not with limited liability and whether or not for pecuniary profit;

(3) the term "investments" shall mean every kind of asset, including, in particular, but not exclusively:

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

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

(c) claims to money or to any performance under contract having a financial value;

(d) patents, trade-marks, trade-names and goodwill;

(e) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

as may be recognized by the law of the Contracting Party in which the investments are made;

(4) the term "returns" shall mean the amounts yielded by an investment and, in particular, though not exclusively, shall include profit, interest, capital gains, dividends, royalties or fees.

(5) the term "territory" shall mean:

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

(b) in respect of the Kingdom of Thailand, the territory over which Thailand has sovereignty or jurisdiction;

(6) the term "market value" shall mean the real value of the assets, taking into account normal market value.

Article 2

(1) The benefits of this Agreement shall apply only in case where the investment of capital by the nationals and companies of one Contracting Party in the territory of the other Contracting Party has been specifically approved in writing by the competent authority of the latter Contracting Party,

(2) Nationals and companies of either Contracting Party shall be free to apply for such approval in respect of any investment of capital whether made before or after the entry into force of this Agreement.

(3) When granting approval in respect of any investment, the approving Contracting Party shall be free to lay down appropriate conditions in accordance with its laws and regulations.

Article 3

(1) Each Contracting Party shall, having regard to its plans and policies, encourage and facilitate the investment of capital in its territory by the nationals and companies of the other Contracting Party.

(2) Investments of nationals or companies of one Contracting Party in the territory of the other Contracting Party shall enjoy the most constant protection and security under the laws of the latter Contracting Party,

Article 4

(1) (a) Investments of nationals or companies of one Party in the territory of the other Contracting Party, as also the returns therefrom, shall receive treatment which is fair and equitable and not less favourable than that accorded in respect of the investments and returns of the nationals and companies of the latter Contracting Party or of any third State.

(b) Each Contracting Party shall in its territory accord to nationals or companies 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 nationals and companies or to the nationals and companies of any third State.

(2) Each Contracting Party shall observe any obligation, additional to those specified in this Agreement into which it may have entered with regard to investments of nationals or companies of the other Contracting Party.

Article 5

(1) Investment of nationals or companies of either Contracting Party shall not be subjected, directly or indirectly to any measures of nationalization or expropriation in the territory of the other Contracting Party except for public purpose related to the internal needs of that Party and against adequate and effective compensation. Such compensation shall amount to the

market value of the investment nationalized or expropriated on the day the measure was taken and shall be made without delay and be effectively realizable.

The national or company affected shall have the right, to the extent permitted by the law of the Contracting Party making the expropriation, to prompt review by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set forth in this paragraph.

(2) Where a Contracting Party expropriates assets of a company which is incorporated or constituted under the law in force in any part of its territory, and in which a national or company of the other Contracting Party owns shares, it shall ensure that the provisions of paragraph (I) of this Article are applied to the extent necessary to guarantee adequate and effective compensation as specified therein to such national or company of the other Contracting Party who is the owner of those shares.

(3) Where investments of a national or company of one Contracting Party in the territory of the other Contracting Party suffer loss owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the other Contracting Party, the national or company concerned shall be accorded treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than would be accorded in the same circumstances to a national or company of the other Contracting Party or to a national or company of any third State.

(4) Without prejudice to the provisions of this Article, the nationals and companies of one Contracting Party shall, in respect of any matter dealt with therein, be accorded in the territory of the other Contracting Party treatment not less favourable than that accorded to the nationals and companies of the latter Contracting Party or of any third State.

Article 6

Each Contracting Party shall guarantee to the nationals and companies of the other Contracting Party the free transfer of the capital of, and the returns from, their investments as well as the payment of compensation under Article 5, subject to the right of each Contracting Party to exercise equitably and in good faith powers conferred by its laws,

Article 7

(1) If either Contracting Party or an agency designated by it makes payment to a national or company under a policy of insurance covering non-commercial risks, which it has given in respect of any investment of capital 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 such a national or company 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 claims of such a national or company.

(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 of the other Contracting Party or credits thereof by virtue of an assignment under subparagraph (a) of paragraph (1) of 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. The transfer outside the territory of the amounts and credits shall be subject to the provisions of Article 6.

Article 8

The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals or companies of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies 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) the formation or extension of a customs union or a free trade area or a common external tariff area or a monetary union or a regional association for economic cooperation; or
- (b) the adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or
- (c) any arrangement with a third country or countries in the same geographical region

designed to promote regional cooperation in the economic, social, labour, industrial or monetary fields within the framework of specific projects; or

(d) the grant to a particular person or company of the status of a "promoted person" under the laws of Thailand on the promotion of investment; or

(e) any international agreement or arrangement, or any domestic legislation, relating wholly or mainly to taxation.

Article 9

(1) All the provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals or companies of any third State shall be interpreted as meaning that such treatment shall be accorded immediately and unconditionally.

(2) Wherever this Agreement makes alternative provision for the grant of national treatment or of treatment not less favourable than that accorded to the nationals or companies of any third State in respect of any matter, the option as between these alternatives shall rest with the Contracting Party beneficiary in each particular case.

Article 10

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultation or negotiation.

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

(3) Such an arbitral tribunal shall be constituted for each individual case as follows:

(a) each Contracting Party shall appoint one member, these two members shall then select a national of a third State who on approval by the two Parties shall be appointed Chairman of the tribunal;

(b) the said members shall be appointed within three , and the Chairman within four months, from the date on which either Contracting Party shall informed the other Contracting Party that it proposes to submit the dispute to an arbitral tribunal.

(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 relevant

agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is 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 necessary appointments.

If the Vice-President is a national 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 national of either Contracting Party shall be invited to make the necessary appointments.

(5) (a) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Parties.

(b) Subject to the power of the arbitral tribunal to give a different ruling concerning costs, the cost of its own member and of its representation in the arbitral proceedings shall be borne by each Contracting Party and the cost of the Chairman and the remaining costs shall be borne in equal parts by the two Contracting Parties.

(c) In all respects other than those specified in subparagraphs (a) and (b) of this paragraph, the arbitral tribunal shall determine its own procedure.

Article 11

In case both Contracting Parties are Contracting States to the Convention on the Settlement of Disputes between States and Nationals of Other States done at Washington on March 18, 1965, each Contracting Party shall consent to submit any legal dispute that may arise out of investments made by a national or company of the other Contracting Party to conciliation or arbitration at the request of such national or company in accordance with the provisions of the said Convention.

Article 12

(1) This Agreement shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible.

The Agreement shall come into force thirty days after the date of the exchange of instruments of ratification and shall remain in force for an initial period of ten years. It shall thereafter continue in force indefinitely, subject to the right of either Contracting Party to terminate it by twelve months prior notice in writing to the other Contracting Party, which notice may be given at any time after the expiry of the ninth year. However, with respect to an investment of capital approved while the Agreement is in force, its provisions shall continue to have effect for a period of ten years from the date of termination, or for any such longer period as may be specified at the time of the approval of the investment, without

prejudice to the application of the rules of general international law after the termination of the Agreement or the expiry of such longer period, as the case may be.

(2) A notice of termination given under paragraph (1) of this Article shall apply to any territory to which this Agreement has been extended under paragraph (5) of Article 1.

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

DONE in duplicate at Bangkok this twenty-fourth day of March 1989, in the Korean, Thai 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 KINGDOM OF THAILAND