

AGREEMENT BETWEEN THE REPUBLIC OF KOREA AND THE REPUBLIC OF AUSTRIA FOR THE ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

Signed at Vienna March 14, 1991
Entered into force November 1, 1991

THE REPUBLIC OF KOREA AND THE REPUBLIC OF AUSTRIA (hereinafter referred to as "Contracting Parties"),

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

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

RECOGNIZING that the encouragement and protection of investments on the basis of the present Agreement stimulates the individual business initiative in this field,

HAVE AGREED AS FOLLOWS:

Article 1 Definitions

For the purpose of this Agreement

(1) the term "**investment**" comprises all assets and in particular, through not exclusively;

- (a) movable and immovable property as well as any other rights in rem such as mortgages, liens, pledges, usufructs and similar rights;
- (b) shares and other types of participations in undertakings;
- (c) claims to money that has been given in order to create an economic value or claims to any performance having an economic value;
- (d) copyrights, industrial property rights such as patents for inventions, trademarks, industrial designs and utility models, technical processes, know-how, trade names and goodwill;
- (e) business concessions under public law to search for, extract or exploit natural resources.

(2) the term "investor" means in respect of either Contracting Party;

- (a) any natural person who is a national of either Contracting Party in accordance with its laws and regulations and makes an **investment** in the other Contracting Party's territory;
- (b) any juridical person or commercial partnership constituted in accordance with the laws and regulations of either Contracting Party, having its seat in the territory of this Contracting Party and making an **investment** in the other Contracting Party's territory.

(3) the term "return" means the amounts yielded by an **investment**, and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties, licence and other fees.

(4) the term "expropriation" also comprises the nationalization or any other measure having equivalent effect.

Article 2 Promotion and Protection of investments

(1) Each Contracting Party shall in its territory promote, as far as possible, investments of investors of the other Contracting Party, admit such investments in accordance with its legislation and in any case accord such investments fair and equitable treatment.

(2) Investments admitted according to paragraph (1) and their returns shall enjoy the full protection of the present Agreement. The same applies without prejudice to the

regulations of paragraph (1) also for their returns in case of reinvestment of such returns. The legal extension, alteration or transformation of an **investment** is considered to be a new **investment**.

Article 3 **Treatment of Investments**

(1) Each Contracting Party shall accord to investors of the other Contracting Party and their investments, as also the returns therefrom, treatment no less favourable than that accorded in respect of the investments and returns of the investors of the Contracting Party or of any third State.

(2) Each Contracting Party shall in its territory accorded 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.

(3) The provisions of this Agreement relative to the granting of treatment not less favourable than that accorded to the investors of any third State and their investments shall not be construed as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the present or future benefit of any treatment, preference or privilege resulting from:

- a) any customs union, common market, free trade area or membership in an economic community;
- b) any international agreement, international arrangement or domestic legislation regarding taxation;
- c) any regulation to facilitate the frontier traffic.

Article 4 **Expropriation**

(1) Investments of investors of either Contracting Party shall not be expropriated in the territory of the other Contracting Party except for a public purpose by due process of law and against compensation. Such compensation shall amount to the actual value of the **investment** expropriated immediately preceding the time in which the actual or impending measure became public knowledge. The compensation shall be paid without undue delay and shall carry the usual bank interest of the country in which the **investment** was made until the time of payment; it shall be effectively realizable and freely transferable. Provisions for the determination and payment of such compensation shall be made in appropriate manner not later than at the moment of the expropriation.

(2) Where a Contracting Party expropriates the assets of a company which is considered as its own company pursuant to paragraph (2) of Article 1 of the present Agreement and in which an investor of the other Contracting Party owns shares, it shall apply the provisions of paragraph (1) so as to ensure due compensation to this investor.

(3) The investor shall be entitled to have the legality of the expropriation reviewed by the competent authorities of the Contracting Party having induced the expropriation.

(4) The investor shall be entitled to have the amount and the provisions for the payment of the compensation reviewed either by the competent authorities of the Contracting Party having induced the expropriation or by an international arbitral tribunal according to Article 8 of the present Agreement.

Article 5 **Repatriation and transfer of capital and returns**

(1) Each Contracting Party shall guarantee without undue delay to investors of the other Contracting Party free transfer in freely convertible currency of payments in connection with an **investment**, in particular but not exclusively, of

- a) the capital and additional amounts for the maintenance or extension of the **investment**;
- b) amounts assigned to cover expenses relating to the management of the **investment**;

- c) the returns;
- d) the repayment of loans;
- e) proceeds from total or partial liquidation or sale of the **investment**;
- f) compensation according to Article 4 paragraph (1) of the present Agreement.

(2) The transfers referred to in this Article shall be effected at the exchange rates prevailing on the day of the transfer.

(3) The rates of exchange shall be determined by the respective banking system in the territory of each of the Contracting Parties. The bank charges shall be fair and equitable.

Article 6

Subrogation

Where one Contracting Party or an institution authorized by it makes payments to its investor in virtue of a guarantee for an **investment** in the territory of the other Contracting Party, the other Contracting Party shall without prejudice to the rights of the investor of the first Contracting Party under Article 8 of the present agreement and to the rights of the first Contracting Party under Article 8 of the present Agreement and to the rights of the first Contracting Party under Article 9 of the present Agreement recognized the assignment to the first Contracting Party of all rights and claims of this investor under a law or pursuant to a legal transaction. The latter Contracting Party shall also recognize the subrogation of the former Contracting Party to any such rights or claims which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments to the Contracting Party concerned by virtue of such assignment, Article 4 and Article 5 of the present Agreement shall apply *mutatis mutandis*.

Article 7

Other Obligations

(1) If the provisions of law of either Contracting Party or international obligations existing at present or established thereafter between the Contracting Parties in addition to the present Agreement, contain a rule, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rule shall to the extent that it is more favourable prevail over the present Agreement.

(2) Each Contracting Party shall observe any contractual obligation it may have entered into towards an investor of the other Contracting Party with regard to investments approved by it in its territory.

Article 8

Settlement of Investment Disputes

(1) Any dispute arising out of an **investment**, between a Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled amicably between the parties to the dispute.

(2) If a dispute according to paragraph (1) cannot be settled within three months of a written notification of a sufficiently detailed claim, the dispute shall upon the request of the Contracting Party or of the investor of the other Contracting Party be submitted for conciliation or arbitration to the International Centre for Settlement of **Investment** Disputes, established by the Convention on the Settlement of **Investment** Disputes between States and Nationals of other States, opened for signature at Washington on 18th March, 1965. In case of arbitration, each Contracting Party, by this Agreement individual arbitral agreement between the Contracting Party and the investor, to submit any such disputes to this Centre and to accept the award as binding. This consent implies renunciation of the requirement that the internal administrative or juridical resorts should be exhausted.

(3) the award shall be final and binding; it shall be executed according to national law; each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with its relevant laws and regulations.

(4) A Contracting Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise the objection that the investor who is the other party to the dispute has received in accordance with a guarantee indemnity in respect of some or all its losses.

Article 9

Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through amicable negotiations.

(2) If a dispute according to paragraph (1) cannot be settled within six months it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member and these two members shall agree upon a national of a third State as their chairman. Such members shall be appointed within two months from the date one Contracting Party has informed the other Contracting Party, that it intends to submit the dispute to an arbitral tribunal, the chairman of which shall be appointed within two further months.

(4) If the periods specified in paragraph (3) have not been observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-President or in case of his inability the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.

(5) The arbitral tribunal shall establish its own rules of procedure.

(6) The arbitral tribunal shall reach its decision in virtue of the present Agreement and pursuant to the generally recognized rules of international law. It shall reach its decision by a majority of votes; the decision shall be final and binding.

(7) Each Contracting Party shall bear the costs of its own member and of its legal representation in the arbitration proceedings. The costs of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The tribunal may, however, in its decision determine another distribution of costs.

Article 10

Application of the Agreement

This Agreement shall apply to investments made in the territory of one of the Contracting Parties in accordance with its laws and regulations by investors of the other Contracting Party prior to as well as after the entry into force of this Agreement.

Article 11

Entry into Force and Duration

(1) This Agreement is subject to ratification and shall enter into force on the first day of the third month that follows the month during which the instruments of ratification have been exchanged.

(2) This Agreement shall remain in force for a period of ten years; it shall be extended thereafter for an unlimited period except if denounced in writing by either Contracting Party twelve months before its expiration.

(3) In respect of investments made prior to the date of termination of the present Agreement the provisions of Article 1 to 10 of the present Agreement shall continue to be effective for a further period of ten years from the date of termination of the present Agreement.

DONE in Vienna, on 14 March 1991, in duplicate, in the Korean, German and English languages, all three texts being equally authentic. In case divergence of interpretation between the texts of this Agreement, the English text shall prevail.

FOR THE REPUBLIC OF KOREA

FOR THE REPUBLIC OF AUSTRIA