

Agreement on encouragement and reciprocal protection of investments between the Kingdom of the Netherlands and the Republic of Korea

The Government of the Kingdom of the Netherlands
and
the Government of the Republic of Korea,

Desiring to strengthen their traditional ties of friendship, to extend and intensify their economic relations and to encourage investments on the basis of equality and for their mutual benefit,

Have agreed as follows:

Article 1

- 1) The Contracting Parties shall promote economic cooperation between their nationals through the encouragement of investments by those nationals in the territory of the other Contracting Party.
- 2) In particular the Contracting Parties shall admit, within the framework of their respective legislation, the participation of their nationals, through investments, in the establishment of productive and commercial activities and the provision of services in their respective territories which would contribute towards the improvement of the standard of living in their territories and the prosperity of their countries.

Article 2

For the purposes of the present Agreement:

- 1) the term 'investments' shall comprise every kind of asset and more particularly, though not exclusively:
 - (a) movable and immovable property as well as any other rights in rem;
 - (b) shares or other kinds of interests in companies;
 - (c) title to money or to any performance, such as goodwill, having an economic value;

- (d) rights in the fields of the intellectual property, technical processes and know-how;
 - (e) business concessions under public law;
- 2) the term 'nationals' shall comprise with regard to either Contracting Party:
- (a) natural persons having the nationality of that Contracting Party in accordance with its law;
 - (b) without prejudice to the provisions of (c) hereafter, legal persons constituted in accordance with the law of that Contracting Party;
 - (c) legal persons controlled, directly or indirectly, by nationals of that Contracting Party but constituted in accordance with the law of the other Contracting Party.

Article 3

- 1) Each Contracting Party shall ensure fair and equitable treatment to the investments of nationals of the other Contracting Party and shall not impair, by unjustified or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those nationals.
- 2) More particularly, each Contracting Party shall accord to such investments the same security and protection as it accords either to those of its own nationals or to those of nationals of any third State, whichever is more favourable to the investor

Article 4

Recognizing the principle of the freedom of transfer each Contracting Party shall authorize, in conformity with its relevant most favourable rules, the transfer, without undue restriction and delay, to the country of the other Contracting Party and in convertible currency, of payments resulting from investment activities and in particular of the following items:

- (a) net profits, interests, dividends and other current income;
- (b) funds necessary
 - i. for the acquisition of raw or auxiliary materials, semi-fabricated or finished products, or

- ii. to replace capital assets in order to safeguard the continuity of an investment;
- (c) additional funds necessary for the development of an investment;
- (d) earnings of natural persons;
- (e) the proceeds of liquidation of capital;
- (f) funds in repayment of loans;
- (g) management fees;
- (h) royalties.

Article 5

Neither Contracting Party shall take any measures depriving, directly or indirectly, nationals of the other Contracting Party of their investments unless the following conditions are complied with:

- (a) the measures are taken in the public interest and under due process of law;
- (b) the measures are not discriminatory or contrary to any undertaking which the former Contracting Party may have given;
- (c) the measures are accompanied by provisions for the payment of just compensation. Such compensation shall represent the genuine value of the investments affected and shall, in order to be effective for the claimants, be paid and made transferable, without undue delay, to the country of which those claimants are nationals and in convertible currency.

Article 6

The Contracting Party in the territory of which a national of the other Contracting Party makes or intends to make an investment shall assent to any demand on the part of such national to submit, for arbitration or conciliation, after the exhaustion of all internal administrative and juridical remedies, to the Centre established by the Convention of Washington of 18 March 1965 on the Settlement of Investment Disputes between States

and Nationals of Other States, any dispute that may arise in connection with that investment.

Article 7

If a national of the one Contracting Party has transferred any rights and securities to that Contracting Party or to another national of that Contracting Party because of that Contracting Party's or the latter national's obligation, under a legal system of guaranteeing against non-commercial risks, to reimburse the former national as to damage in respect of an investment made by that national in the territory of the other Contracting Party and approved by that Contracting Party, the latter Contracting Party recognizes the subrogation of the grantor into the said rights and securities of the investor.

Article 8

The present Agreement shall also apply to investments in the territory of a Contracting Party made, in accordance with its legislation, prior to the entry into force of the present Agreement, by nationals of the other Contracting Party.

Article 9

- 1) The Contracting Parties hereby establish a Mixed Commission composed of representatives appointed by them.
- 2) The Mixed Commission shall meet at the request of one of the Contracting Parties, to discuss any matter pertaining to the implementation of the present Agreement. It shall make recommendations to the respective Governments in cases where the objectives of the Agreement might be furthered.

Article 10

In respect of any matter governed by the present Agreement, nothing in the Agreement shall prevent a national of the one Contracting Party from benefiting from any right more favourable to him and accorded by the other Contracting Party.

Article 11

- 1) Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement which cannot be settled, within a reasonable lapse of time, by means of diplomatic negotiations, shall be submitted, at the request of any party to the dispute, to an arbitral tribunal, composed of three members. Each Contracting Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is not a national of either Contracting Party.
- 2) If one of the Contracting Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Contracting Party to make such appointment, the latter Contracting Party may invite the President of the International Court of Justice to make the necessary appointment.
- 3) If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Contracting Party may invite the President of the International Court of Justice, to make the necessary appointment.
- 4) If, in the cases provided for in the second and third paragraph of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Contracting Party, the Vice-President should make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party the most senior member of the Court who is not a national of either Contracting Party should make the necessary appointments.
- 5) The tribunal shall decide on the basis of respect for the law. Before the tribunal decides, it may at any stage of the proceedings propose to the parties that the dispute be settled amicably. The foregoing provisions shall not prejudice the power of the tribunal to decide the dispute *ex aequo et bono* if the parties so agree.
- 6) Unless the parties decide otherwise, the tribunal shall determine its own procedure.
- 7) The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the parties to the dispute.

Article 12

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the Kingdom as a whole, unless the notification, provided for in Article XIII, paragraph (1) of the present Agreement, provides otherwise.

Article 13

- 1) The present Agreement shall enter into force on the first day e of the second month following the date on which the Contracting Parties have informed each other in writing that the procedures constitutionally required therefor in their respective countries have been complied with, and shall remain in force for a period of 15 years. Unless notice of termination has been given by either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for another period of 10 years, and so on, each Contracting Party reserving the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.
- 2) Subject to the period mentioned in paragraph (1) of this Article, the Government of the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of one or more of the constituent parts of the Kingdom.
- 3) In respect of investments made before the date of the termination of the present Agreement the foregoing Articles thereof shall continue to be effective for a further period of 15 years from that date.

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

DONE in duplicate at [place] in the English language, on [date]

For the Government of
the Kingdom of the Netherlands:

For the Government of the
Republic of Korea