

AGREEMENT  
FOR THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS  
BETWEEN  
THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL  
AND THE GOVERNMENT OF THE REPUBLIC OF KOREA

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

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

Desiring to create favourable conditions for investments of investors of one country in the territory of the other country, and

Recognizing that an Agreement to mutually promote and protect investments from noncommercial risks can contribute to stimulating entrepreneurial initiatives that can favor the prosperity of both countries,

Have agreed as follows:

ARTICLE 1  
Definitions

1. For the purposes of this Agreement:

(1) The term "investor" means any natural or juridical person who invests in the territory of the other Contracting Party;

(a) the term "natural person" means, with respect to either Contracting Party, a natural person having the nationality or citizenship of that Party in accordance with its laws; and

(b) the term "juridical person" means, with respect to either Contracting Party, any entity incorporated or constituted in accordance with, and recognized as a juridical person by its laws, such as public institutions, corporations, foundations,

/ companies, partnerships,

companies, partnerships, and associations, irrespective of whether their liabilities are limited or otherwise, and whether or not organized for pecuniary profit, and whose main office is located in its territory.

- (2) The term "investment" means every kind of asset invested or reinvested by an investor of one Contracting Party in the territory of the other Contracting Party according to the laws of the latter Party and in particular, though not exclusively, includes;
- (a) movable and immovable property including any related property rights such as mortgages, liens, pledges and similar rights;
  - (b) shares in, stocks of, and any other forms of participation in a company or any business enterprise as well as bonds, debentures and debts of a company or any business enterprise;
  - (c) claims to money and claims to performance pursuant to contract having an economic value and associated with an investment;
  - (d) intellectual property rights, including copyrights, trademarks, patents, industrial designs, technical processes, know-how, trade names and goodwill; and
  - (e) any right conferred by laws or under contracts relating to an investment and any licenses and permits pursuant to the laws, including the right to search for, extract, cultivate or exploit natural resources.
- (3) The term "returns" means amounts yielded by an investment and in particular, though not exclusively, includes profits, dividends, interest, capital gains, royalties, technical assistance fee or other fees.

/ (4) The

- (4) The term "territory" means the territory of the Federative Republic of Brazil or the territory of the Republic of Korea respectively, as well as those maritime areas, including the sea-bed and sub-soil adjacent to the outer limit of the territorial sea of either State, over which the State concerned exercises, in accordance with international law, sovereign rights or jurisdiction for the purpose of exploration and exploitation of the natural resources of such areas.
- (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.

2. No change in the form in which assets and capitals are invested or reinvested shall affect their character as investments according to this Agreement, provided that relevant laws and regulations are complied with.

## ARTICLE 2 Promotion, Admission and Protection of Investments

1. Each Contracting Party shall encourage the creation of favourable conditions for investors of the other Contracting Party to make investments in its territory, 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. Each

3. Each Contracting Party shall, according to its law, grant the authorizations required for these investments to be realized and shall permit contracts for manufacturing licenses, technical, commercial, financial, and administrative assistance, and shall grant the authorizations required for the activities of consultants or experts hired by investors of the other Contracting Party.

ARTICLE 3  
Investment Treatment

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 investments made in similar conditions by investors of any third country.

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 country.

3. The provisions of paragraphs 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 Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

/ (1) any

- (1) any existing or future customs union, free trade area, a common external tariff area, a monetary union or similar international agreement or other forms of regional cooperation to which either Contracting Party is or may become a Party; or
- (2) any existing or future convention or other international arrangement relating wholly or mainly to taxation.

ARTICLE 4  
Compensation for Damage or Loss

1. When investments of investors of either Contracting Party suffer loss 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, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

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 damage or loss in the territory of the other Contracting Party resulting from:

- (1) requisitioning of their property by its forces or authorities;  
or
- (2) 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

shall be accorded just and adequate compensation for the damage or loss sustained during the period of the requisitioning or as a result of the destruction of the property.

## ARTICLE 5 Expropriation

1. Investments of investors of either 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, under due process of law, on a non-discriminatory basis and provided that it is accompanied by prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriatory action was taken or became public knowledge, whichever is earlier, shall include interest from the date of expropriation, shall be made without delay, be effectively realizable and be freely transferable.
2. The investor of one Contracting Party claiming that all or part of his or its investment has been expropriated shall have a right to prompt review, by a judicial or other competent authority of the other Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in paragraph 1 of this Article.
3. Where one 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 own shares or other forms of participation, the provisions of paragraphs 1 and 2 of this Article shall apply.

/ ARTICLE 6

ARTICLE 6  
Transfers

1. The Contracting Parties shall guarantee the transfer of payments related to investments and returns. Such transfers shall include in particular, though not exclusively:

- (1) 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;
- (2) the net proceeds accruing from the sale or the total or partial liquidation of any investment made by an investor of the other Contracting Party;
- (3) funds in repayment of loans related to an investment;
- (4) the net earnings of nationals of the other Contracting Party who are allowed to work in connection with an investment in its territory;
- (5) additional funds necessary for the maintenance, management or development of an existing investment; and
- (6) compensation pursuant to Articles 4 and 5.

2. The transfers shall be made in a freely convertible currency, without undue 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 transfer.

/ ARTICLE 7



ARTICLE 7  
Subrogation

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, the latter Contracting Party shall recognize:

- (1) the assignment, whether under the law or pursuant to a legal transaction in that country, of any right, except ownership of immovable property, or claim from the investor to the former Contracting Party or its designated agency; and
- (2) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the abovementioned rights and enforce the claims of that investor.

ARTICLE 8  
Settlement of Investment Disputes between a Contracting  
Party and an Investor of the Other Contracting Party

1. Any dispute between a Contracting Party and an investor of the other Contracting Party relating to an investment under this Agreement shall be settled amicably, as far as possible, by the parties to the dispute through consultation and negotiation.
2. If the dispute is not amicably settled within six months after the beginning of such consultations, it may be submitted to, at the discretion of the investor:
  - (1) the local courts of the Contracting Party to the dispute; or
  - (2) international

(2) international arbitration, under the conditions described in paragraph 5 of this Article.

3. Once one of these two channels is chosen, the decision shall be definitive and irreversible. Notwithstanding this provision, when the dispute is submitted to the local courts, access to international arbitration shall be available if the investor withdraws the judicial process before any sentence is pronounced.

4. The local remedies raised by the investor of one Contracting Party under the laws and regulations of the other Contracting Party in which the investment has been made shall not be less favourable than that accorded to investments of its own investors or investors of any third State.

5. If the investor opts for international arbitration, the dispute shall be submitted to:

- (1) the International Center for the Settlement of Investment Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature in Washington on 18 March 1965, provided that the Federative Republic of Brazil becomes a Party to this Convention. Until that moment, the dispute shall be submitted to the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings; or

(2) an ad hoc Tribunal established according to the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), adopted through Resolution 31/98 of the General Assembly of December 15, 1976. The Arbitral Tribunal shall be composed of three arbitrators - one appointed by the Contracting Party which is a party to the dispute, one appointed by the other party to the dispute, and a third one, who shall preside over the Tribunal, appointed by the two arbitrators selected as provided for above. If the third arbitrator is not appointed within 30 days after the appointment of the two other arbitrators, the President of the Arbitral Tribunal of the International Chamber of Commerce shall appoint the third arbitrator.

6. The Arbitral Tribunal shall reach a decision according to the provisions of this Agreement, the domestic law of the Contracting party where the investment was made, and relevant provisions of the International Law.

7. The awards shall be definitive and binding for the parties involved in the dispute, and shall be executed according to the national law.

8. The Contracting Parties shall refrain from resorting to the diplomatic channels to deal with matters related to disputes submitted to judicial proceedings or international arbitration before the conclusion of the proceedings, except if one of the parties to the dispute fails to comply with the provisions of the said sentence or award. Diplomatic protection shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

ARTICLE 9  
Settlement of 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 consultation or diplomatic channels.
2. If the dispute cannot be so 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

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 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, or by general principles of international law, 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 the more favourable to his or its case.

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

/ 3. Either

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

1. Investments already made by investors of either Contracting Party shall be protected by this Agreement as of the date on which it becomes effective.
2. This Agreement shall not apply to disagreements or disputes existing before it becomes effective.

ARTICLE 12  
Entry into Force, Duration and Termination

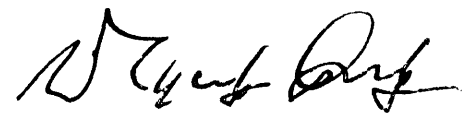
1. Each Contracting Party shall notify the other that their respective domestic legal requirements for the entry into force of this Agreement have been complied with, and the Agreement shall become effective thirty days after the date on which the second notification is received.
2. This Agreement shall remain in force for a period of ten years and shall continue in force thereafter for subsequent periods of five years unless, one year before the expiry of the initial or any subsequent periods, either Contracting Party notifies the other Contracting Party 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 this Agreement shall continue to be effective for a period of ten years from the date of termination.

/ IN WITNESS

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

Done in duplicate at *Brasília*, on the *1st* day of *September*, in the Portuguese, Korean 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  
FEDERATIVE REPUBLIC OF BRAZIL

  
FOR THE GOVERNMENT OF  
THE REPUBLIC OF KOREA