

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE SULTANATE OF OMAN FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

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

Desiring to intensify economic cooperation between the two countries,

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

Recognizing that the promotion and reciprocal protection of investments on the basis of this Agreement will stimulate business initiative in this field,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) "investments" means every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter Contracting Party and in particular, though not exclusively, include:

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

(b) Shares, stocks and debentures, and any other form of participation in a company or any business enterprise and rights or interest derived therefrom;

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

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

(e) Business concessions having an economic value conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources; and

(f) Goods that, under a leasing contract, are placed at the disposal of a lessee in the territory of a Contracting Party in accordance with its laws and regulations. Any change of the form in which assets are invested or reinvested shall not affect their character as an investment, provided that such change is in accordance with the legislation of the Contracting Party in whose territory the investment was made.

(2) "returns" means the amounts yielded by investments and, in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and all kinds of fees.

(3) "investors" means any natural or juridical persons who invest in the territory of the other Contracting Party:

(a) The term "natural persons" means any persons having the nationality of that Contracting Party in accordance with its laws; and

(b) The term "juridical persons" means any entities such as companies, public institutions, authorities, foundations, partnerships, firms, establishments, organizations, corporations or associations, incorporated or constituted in the territory of one Contracting Party in accordance with the laws of that Contracting Party.

(4) "territory" means the territory of the Republic of Korea or the territory of the Sultanate of Oman respectively, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea 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) "freely convertible currency" means the currency that is widely used to make payments for international transactions and widely exchanged in principal international 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 investments in its territory and shall admit such investments in accordance with its laws and regulations.

(2) Investments made by investors of each 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) Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the operation, management, maintenance, use, enjoyments or disposal of investments in its territory by investors of the other Contracting Party.

Article 3. Treatment of Investments

(1) Subject to the provisions of the annex protocol, 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 no less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State, whichever is more favourable to investors.

(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 no less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to investors.

(3) The treatment mentioned in paragraphs (1) and (2) of this Article shall not apply to any advantages granted by one Contracting Party to investors of a third State by virtue of its participation or association in a Free Trade Area, Customs Union, Common Market or any other form of regional economic cooperation. The provisions of paragraphs (1) and (2) of this Article do not apply to tax matters.

Article 4. Compensation for Losses

(1) Investors of one Contracting Party whose investments suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection, riot or other similar situations in the territory of the other Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other forms of settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable without undue delay.

(2) Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

(a) Requisitioning of their property by its forces or authorities; or

(b) Destruction of their property by its forces or authorities which was not caused by combat action or was not required by the necessity of the situation, shall be accorded restitution or adequate compensation no less favourable than that which would be accorded under the same circumstances to an investor of the other Contracting Party or to an investor of any third State, whichever is more favourable to the investors. Resulting payments shall be freely transferable without undue delay.

Article 5. Expropriation

(1) Investments of investors of one Contracting Party shall not be nationalized, expropriated or otherwise subjected to any other measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for public purposes and against prompt, adequate and effective compensation. The expropriation shall be carried out on a non-discriminatory basis in accordance with applicable legal procedures.

(2) Such compensation shall amount to the fair market value of the expropriated investments immediately before expropriation was taken or before the impending expropriation become public knowledge, whichever is the earlier, shall include interest at the applicable commercial rate from the date of expropriation until the date of payment and shall be made without undue delay, be effectively realizable and be freely transferable. In both cases of expropriation and compensation, treatment no less favourable than that which the Contracting Party accords to its own investors or to investors of any third State shall be accorded, whichever is more favourable to investors.

(3) Investors of one Contracting Party affected by expropriation shall have a right to prompt review by a judicial or other independent authority of the other Contracting Party, of their case in relation to the execution of the expropriation decision and to the valuation of their investments in accordance with the principles set out in this Article.

(4) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under its legislation and in which the investors of the other Contracting Party have participated by owning its shares or debentures, the provision of this Article shall be applied to those shares or debentures.

Article 6. Transfers

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of their investments and returns. Such transfers shall include, in particular, though not exclusively:

(a) Net profits, capital gains, dividends, interest, royalties, fees and any other current income accruing from investments;

(b) Proceeds accruing from the sale or the total or partial liquidation of investments, after payment of their financial obligation;

(c) Funds in repayment of loans related to investments;

(d) Earnings and other remuneration of nationals of the other Contracting Party and nationals of a third State who are allowed to work in connection with investments in its territory;

(e) Additional funds necessary for the maintenance or development of the existing investments;

(f) Amounts spent for the management of the investments in the territory of the other Contracting Party or a third State;

(g) Compensation pursuant to Articles 4 and 5.

(2) All transfers under this Agreement shall be made in a freely convertible currency, without undue restriction and delay, and 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, whichever is more favourable to investors.

Article 7. Subrogation

(1) If a Contracting Party or its designated agency makes a payment to its own investors under an indemnity given in respect of investments in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) The assignment, whether under the law or pursuant to legal transaction of that State, of any rights or claims from investors 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 those investors.

(2) The subrogated claims or rights shall not exceed the original rights or claims of the 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 related to investments including expropriation or nationalisation of investments shall, as far as possible, be settled by the parties to the dispute in an amicable way.

(2) The local remedies under the laws and regulations of one Contracting Party in the territory of which the investments have been made available for investors of the other Contracting Party on the basis of treatment no less favourable than that accorded to its own investors or investors of any third State, whichever is more favourable to investors.

(3) The dispute shall be submitted, upon the request of either party to the dispute, either to:

(a) The competent court or administrative tribunal of the Contracting Party; or

(b) If the dispute cannot be settled within six months pursuant to paragraph (1) of this Article from the date on which that dispute was raised by either party, an arbitral tribunal established under: (i) The arbitration rules of the United Nations Commission on International Trade Law; or

(ii) The rules of the International Center for Settlement of Investment Disputes, established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington D.C., on March 18, 1965; or

(c) Any other form of dispute settlement procedure agreed upon by the parties to the dispute.

If the parties to the dispute disagree where to submit that dispute, the decision of the investor shall prevail. (4) The arbitration awards shall be final and binding upon the parties to the dispute, and the Contracting Party that is party to the dispute shall ensure the recognition and enforcement of the award in accordance with its relevant laws and regulations.

Article 9. Settlement of Disputes between the Contracting Parties

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

(2) If any dispute cannot be settled within six months, it shall, upon the request of either Contracting Party, be submitted to an ad hoc Arbitral Tribunal in accordance with the provisions of this Article.

(3) Such an Arbitral Tribunal shall be constituted for each individual case in the following way: Within two months from the date of 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, with which both Contracting Parties maintain diplomatic relations, who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within two 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 by either Contracting Party to the President of the International Court of Justice to make such appointments, subject to the same consideration set out in paragraph (3). If the President is a national of either Contracting Party or otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointments. If the Vice-President also is a national of either Contracting Party or 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 appointments.

(5) The Arbitral Tribunal shall determine its own procedure. The Tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties.

(6) Each Contracting Party shall bear the costs of its own arbitrator and its representation in the arbitral 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 direct that a higher proportion of costs shall be borne by one of the two Contracting Parties.

Article 10. Application of other Rules

(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 from taking advantage of whichever rules are more favourable to 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 of contracts is more favourable than that accorded by this Agreement, the more favourable treatment shall be accorded.

(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

The Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning investments which was raised before its entry into force.

Article 12. Entry Into Force, Duration and Termination

(1) Each Contracting Party shall notify the other Contracting Party in writing that its legal requirements for the entry into force of this Agreement have been fulfilled. This Agreement shall enter into force after one month from the date of the latter notification.

(2) This Agreement shall remain in force for a period of fifteen years and shall continue in force for another period or periods of fifteen years unless either Contracting Party notifies the other Contracting Party in writing, one year in advance, of its intention to terminate this Agreement.

(3) In respect of investments made prior to the termination of this Agreement, the provisions of Article 1 to 11 of this Agreement shall remain in force for a further period of twenty years from the date of termination.

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

DONE in duplicate at Seoul on this 8th day of October 2003, corresponding to 12th day of Shaaban 1424H in the Korean, Arabic 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 SULTANATE OF OMAN

PROTOCOL

With regard to the Article 3, paragraph (1), it is understood that the provisions in that paragraph do not obstruct the authority of the Contracting Party in whose territory the investments are made to provide particular incentives and rights aimed at, whether mainly or solely, its own investors pursuant to its applicable laws and regulations.