

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

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

Desiring to develop the economic cooperation between both States,

Intending to encourage and create favourable conditions for investments of investors of either State in the territory of the other State on the basis of equality and mutual benefit, and

Recognizing that the promotion and reciprocal protection of investments under the present Agreement stimulates initiative in this field,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investments" shall mean every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party and shall include in particular, though not exclusively:

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

(b) shares in, stocks and debentures of, 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 having an economic value associated with an investment;

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

(e) any right conferred by law or under a contract and any licenses and permits pursuant to law, including the right to explore, extract, cultivate or exploit natural resources;

Any alteration of the form in which assets are invested shall not affect their classification as investment, provided that such alteration is not in contradiction with the laws of the relevant Contracting Party.

2. The term "investor" shall mean:

(a) a natural person who is a national of one Contracting Party in accordance with its legislation and invests in the territory of the other Contracting Party;

(b) any company, organization, partnership or other form of association incorporated or constituted in accordance with the legislation of one Contracting Party and having its seat in the territory of this Contracting Party, irrespective of its juridical personality, which invests in the territory of the other Contracting Party.

3. The term "returns" shall mean amounts yielded by an investment and, in particular though not exclusively, includes profits, interest, capital gains, shares, dividends, royalties and all kind of fees.

4. The term "territory" shall mean:

(a) with regard to the Republic of Korea: the territory of the Republic of Korea, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea of the Republic of Korea, over which the Republic of Korea exercises, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploration and exploitation of the natural resources of such areas;

(b) with regard to the Republic of Bulgaria: the territory under the sovereignty of the Republic of Bulgaria, including the territorial sea, as well as the continental shelf and the exclusive economic zone over which the Republic of Bulgaria exercises sovereign rights or jurisdiction in conformity with international law.

5. The term "freely convertible currency" shall mean 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 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. Neither Contracting Party shall in any way impair by discriminatory measures the operation, management, maintenance, use, enjoyments or disposal of investments in its territory by investors of the other Contracting Party.

Article 3. National and Most-favoured-nation 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 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.

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.

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:

(a) any customs union or free trade area or a common external tariff area of economic union or a monetary agreement or other forms of regional cooperation to which either of the Contracting Parties is or may become a party; or

(b) any international agreement or arrangement relating wholly or mainly to taxation.

Article 4. 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 purpose and against prompt, adequate and effective compensation. The expropriation shall be carried out on a non-discriminatory basis in accordance with legal procedures.

2. Such compensation shall amount to the fair market value of the expropriated investments immediately before expropriation was taken or before impending expropriation became 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 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.

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 and of 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 laws and regulations, and in which investors of the other Contracting Party participate or own shares or debentures, the provision of

this Article shall be applied.

Article 5. 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 in combat action or was not required by the necessity of the situation,

Shall be accorded restitution or adequate compensation no less favourable than that would be accorded under the same circumstances to an investor of the other Contracting Party or to an investor of any third State. Resulting payments shall be freely transferable without undue delay.

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 profit, 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;

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

(d) earnings of nationals of the other Contracting Party 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 investment in the territory of the other Contracting Party, and

(g) compensation pursuant to Articles 4 and 5.

2. Without prejudice to the provisions of paragraph 1 of this Article, investors of the other Contracting Party shall fulfill financial obligations, inter alia payment of taxes, in the territory of one Contracting Party in accordance with its laws and regulations.

3. All transfers under this Agreement shall be made in a freely convertible currency, without undue restriction and delay, at the market exchange rate, prevailing on the date of the transfer.

Article 7. Subrogation

A Contracting Party or its designated agency having, by virtue of a guarantee given for an investment made in the territory of the other Contracting Party, made payment to one of its own investors shall, under a subrogation, be entitled to exercise the rights and claims as well as to assume the obligations of the said investor. The subrogated Contracting Party or its designated agency cannot acquire rights or assume obligations greater than those of the ensured 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 derived from an alleged breach of an obligation under this Agreement including expropriation or nationalization of investments shall, as far as possible, be settled by the parties to the dispute in an amicable way.

2. If such a dispute cannot be settled within three (3) months from the date either party to the dispute requested amicable settlement, the investor concerned may submit the dispute to the competent court of the Contracting Party in whose territory the investment was made or alternatively either to the International Center for Settlement of Investment Disputes (ICSID) set up by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done in Washington, March 18th, 1965 or to an ad-hoc arbitral tribunal to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. The award shall be final and binding on the parties to the dispute, Each Contracting Party 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 through consultations or negotiations.

2. If the dispute cannot be settled within three (3) 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 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 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 award on the basis of the provisions of this Agreement and of other similar agreements concluded between the Contracting Parties, as well as of the general principles of international law. 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 proceeding, the cost 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. The arbitral tribunal shall determine its own procedure.

Article 10. Scope of Agreement

This 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 settled before its entry into force.

Article 11. 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, 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 from whichever rules are the most favourable to his 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.

Article 12. Consultations

Each Contracting Party may propose to the other Contracting Party to consult on any matter concerning the interpretation or application of this Agreement. The other Contracting Party shall accord sympathetic consideration to and shall afford adequate opportunity for such consultation.

Article 13. Entry Into Force, Duration and Termination

1. Each of the Contracting Parties shall notify to the other the completion of the procedures required by its law for bringing this Agreement into force. This Agreement shall enter into force thirty (30) days after the date of the second notification.
2. This Agreement shall remain in force for a period of ten (10) years and shall continue in force thereafter unless, one (1) year before the expiry of the initial or any subsequent period, either Contracting Party notifies the other in writing of its intention to terminate the 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 fifteen (15) 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 Sophia on this twelfth day of June, 2006, in the Korean, Bulgarian 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 REPUBLIC OF BULGARIA