AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SERBIA AND GOVERNMENT OF THE REPUBLIC OF KOREA ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Serbia and the Government of the Republic of Korea (hereinafter: the "Contracting Parties"),

Wishing to create favorable conditions for greater investments by investors of one Contracting Party in the territory of the other Contracting Party, based on the principles of equality and mutual benefit,

Recognizing that the promotion and protection of investments under this Agreement will contribute to the advancement of individual business initiatives and improve prosperity in both States, and

Wishing to achieve these objectives in a manner consistent with the protection of health, safety, and the environment, and the promotion of consumer protection and internationally recognized workers' rights, taking into account the need to ensure the achievement of legitimate government objectives for promoting sustainable development;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. "investment" means any kind of property in the territory of a Party, owned or controlled by an investor of the other Party, provided that the investment has been made in accordance with its laws and regulations, and includes in particular, but not exclusively, the following forms:

(a) an enterprise (a legal person or other entity incorporated and organized under the national laws of the State of a Party, whether or not organized for profit, and whether privately or state-owned or controlled by the State, and includes corporations, trusts, partnerships, sole proprietorships, branches, joint ventures, associations, or organizations);

(b) interests, shares, and other forms of participation in a business entity;

(c) bonds, bills of exchange, and other debt securities and loans;

(d) futures, options, and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing, public-private partnership, and other similar contracts concluded in accordance with the national legislation of the Contracting Party whose territory is the location of the investment;

(f) monetary claims related to the investment under a credit agreement;

(g) intellectual property rights;

(h) licenses, approvals, permits, and similar rights granted in accordance with national legislation;

(i) other tangible and intangible, movable and immovable property and related real rights, such as lease, mortgage, guarantee and pledge. For the avoidance of doubt, market share, market access, expected gains and the opportunity to make a profit are not in themselves an investment;

For the purposes of this Agreement, the term "investment" does not mean:

(a) a monetary claim arising solely from the commercial sale of goods and services, unless it is a loan that has the characteristics of an investment;

(b) an order or judgment rendered in a judicial or administrative proceeding.

To be considered an investment, the asset must have the characteristics of an investment, such as the commitment of capital or other resources, an expectation of gain or profit, or the assumption of risk.

2. The term “investor” means any natural or legal person of the State of a Contracting Party who invests in the territory of the State of another Contracting Party:

(a) a natural person is a person who has the nationality of the State of a Contracting Party, in accordance with its national legislation. A natural person who holds dual nationality shall be deemed a national of the State of the Contracting Party whose nationality is dominant and effective; and

(b) a legal person is any entity, established for profit or not, such as a business entity, public institution, agency, foundation, partnership, firm, organization, corporation, or association established or otherwise organized in accordance with the laws and regulations of a Party in the territory of that Party.

3. The term “income” means the monetary amount derived from an investment and includes, in particular, but not exclusively, profit, capital gain, dividend, interest, royalty, and other similar remuneration arising from the investment.

4. The term “territory” means:

(a) In relation to the Republic of Serbia:

The territory over which the Republic of Serbia exercises sovereign rights and jurisdiction in accordance with its national legislation and international law.

(b) With respect to the Republic of Korea:

The land, maritime, and airspace over which the Republic of Korea has sovereignty, and the maritime areas, including the seabed and subsoil in and beyond the outer limit of the territorial sea over which the Republic of Korea may exercise sovereign rights or jurisdiction in accordance with its national legislation and international law.

5. “freely convertible currency” means any currency which the International Monetary Fund designates in accordance with the provisions of the Articles of Agreement of the International Monetary Fund and its amendments.

6. “financial service” means any service of a financial nature. A financial service includes all types of insurance and insurance-related services, banking and other financial services, as well as a ancillary and auxiliary service of a financial nature.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to invest in the territory of its State and shall permit such investments in accordance with its national legislation.

2. Each Contracting Party shall, with respect to investments of investors of the other Contracting Party, guarantee, in accordance with customary international law, fair and equitable treatment and full protection and security on the territory of its State.

3. For greater certainty, paragraph 2 of this Article prescribes the minimum standard of customary international law as the minimum standard of treatment to be afforded to investments of investors of another Party. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment more favorable than that required by this standard and do not create additional substantive rights. The obligations under paragraph 2 ensure:

(a) “fair and equitable treatment” which includes the obligation not to deny justice in criminal, civil, or administrative judicial proceedings in accordance with the due process principle contained in the major legal systems of the world; and

(b) “full protection and security” which requires each State Party to ensure a level of protection of property, in accordance with international customary law.

4. A determination that a breach has occurred of any other provision of this Agreement or of any other international agreement does not constitute a breach of this Article.

5. No Party shall take any unreasonable and discriminatory measures directed at the management, maintenance, use, enjoyment, and disposal of an investment by an investor of another Party, or impose unreasonable or discriminatory measures on investments of investors of another Party relating to local content requirements, technology transfer, or export performance requirements.

Article 3. Treatment of Investments

1. Each Contracting Party shall, in its territory, grant to investors of the other Contracting Party, with respect to the management, maintenance, use, enjoyment, and disposal of an investment, treatment that is no less favorable than the treatment it grants, in the circumstances, to investors of its own State (hereinafter: national treatment) or to investments of investors of third States (hereinafter: most-favored-nation treatment), whichever is more favorable.

2. Each Contracting Party shall, in accordance with its national legislation, ensure that investments in the territory of its State of the other Contracting Party, with respect to management, maintenance, use, enjoyment or disposition of their investments, treatment that is no less favorable than the treatment it grants to investments of investors of its own State (national treatment) or to investments of investors of third States (most-favored-nation treatment), whichever is more favorable.

3. The national treatment and the most-favored-nation treatment referred to in paragraphs 1 and 2 of this Article shall not apply to:

(a) public procurement; or

(b) subsidies or loans, including government credit support, guarantees, and insurance.

4. The most-favored-nation treatment under paragraphs 1 and 2 of this Article does not apply to privileges that a Contracting Party grants to investors of third States by virtue of its present or future membership or association in a customs or economic union, monetary union, a common market or free trade area, or under a similar international agreement establishing such unions or other forms of regional cooperation, or under an international agreement or arrangement that relates, in whole or in part, to taxation.

5. For greater certainty, the most-favored-nation treatment under paragraphs 1 and 2 of this Article does not apply to Article 13 of this Agreement.

Article 4. Compensation for Losses

1. A Contracting Party, in the territory of which investors of the other Contracting Party suffer losses as a result of war or other armed conflict, a state of emergency, insurrection, riot, rebellion, or other similar situation, shall provide with respect to compensation, compensation, restitution, or other form of reparation, to investors of the other Contracting Party treatment that is no less favorable than the treatment that it grants to investors of its own state or investors of any third state.

2. Notwithstanding the provisions of paragraph 1, investors of a Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Party, resulting from:

(a) the expropriation of their property by the competent authorities of the other Contracting Party, or

(b) the destruction of their property by the competent authorities of the other Contracting Party, which is not caused by, and was not made necessary by, an armed conflict, repatriation or compensation, or both, for the loss suffered. Fair and adequate compensation shall be provided without delay, in accordance with Article 5 of this Agreement, mutatis mutandis.

Article 5. Expropriation

1. Investments of investors of a Party shall not be expropriated or nationalized, directly or indirectly, by measures having an effect equivalent to nationalization or expropriation (hereinafter “expropriation”) in the territory of the other Party, except:

(a) in the public interest;

(b) on a non-discriminatory basis;

(c) with appropriate compensation to be paid without delay; and

(d) in accordance with law.

2. The compensation referred to in paragraph 1 shall be:

(a) paid without delay;

(b) equal to the market value of the expropriated investment as it was immediately prior to the expropriation (the date of expropriation);

(c) without regard to any change in value that occurred because the intended expropriation was known beforehand; and

(d) effectively realizable and freely transferable.

3. If the market value is reduced in a convertible currency, the compensation under paragraph 1(c) of this Article shall not be less than the market value on the date of expropriation, with reasonable commercial interest, calculated from the date of expropriation to the date of payment.

4. If the market value is in a non-convertible currency, the compensation under paragraph 1(c) of this Article, converted into the currency of payment at the market exchange rate prevailing on the date of payment, shall not be less than:

(a) the market value, converted into a convertible currency at the prevailing market rate on the date of expropriation, and

(b) interest, at a commercially reasonable rate for such freely convertible currency, calculated from the date of expropriation to the date of payment.

5. An aggrieved investor of a Party has the right to the prompt settlement of his case by a judicial or other independent authority of the other Party and to an assessment of his investment in accordance with the principles set forth in this Article.

6. This Article does not apply to the issuance of compulsory licenses for intellectual property rights in accordance with the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization (the TRIPS Agreement).

7. This Article shall be interpreted in accordance with the Annexes to this Agreement.

Article 6. Transfers

1. Each Contracting Party shall guarantee to investors of another Contracting Party the free transfer of monetary amounts relating to their investments, to and from the territory of its State. These transfers include, in particular, but are not limited to:

(a) the capital invested and additional funds for the maintenance or increase of the capital invested;

(b) proceeds derived from the investment and, in particular, but not exclusively, profits, interest, capital gains, dividends, royalties, and other remuneration;

(c) payments made under contracts, including credit agreements;

(d) income from the total or partial sale or liquidation of investments;

(e) amounts of fees paid under Articles 4 and 5 of this Agreement;

(f) payments under decisions resulting from dispute resolution pursuant to this Agreement;

(g) wages and other remuneration of employees in connection with the investment.

2. All transfers under this Agreement shall be made in convertible currency, without restriction or delay, at the official rate of exchange prevailing on the date of transfer in the territory of the Contracting Party where the investment is made.

3. Notwithstanding paragraphs 1 and 2 of this Article, a Contracting Party may, in accordance with its national laws, in good faith and in a fair and non-discriminatory manner, delay or prevent a transfer in connection with:

(a) liquidation, bankruptcy, or the protection of creditors' rights;

(b) issuance, trading, or dealing in securities;

(c) criminal or penal sanctions;

(d) financial reporting or record-keeping of transfers, when necessary to assist in law enforcement or to assist financial institutions, or

(e) enforcement of orders or judgments in judicial or administrative proceedings.

4. A Contracting Party may adopt or continue to apply measures which are not consistent with its obligations under paragraphs 1 and 2 of this article:

(a) in the case of a serious balance of payments disturbance and external financial difficulties or their resolution; or

(b) in the case where, under exceptional circumstances, capital movements cause or are likely to cause serious difficulties for macroeconomic management, in particular monetary policy and exchange rate policy.

5. The measures referred to in paragraph 4 of this Article:

(a) shall not last longer than one year, unless, in exceptional circumstances, a Contracting Party intends to extend the application of these measures, in which case it shall consult the other Contracting Party in advance regarding the proposed extension of the measure and the manner of its application;

(b) will be consistent with the provisions of the Articles of Agreement of the International Monetary Fund;

(c) will not be discriminatory;

(d) will not exceed the scope necessary to overcome the circumstances established in paragraph 4 of this Article;

(e) will be temporary and will cease as soon as conditions permit;

(f) will not be aimed at expropriation;

(g) will be notified to the other Contracting Party without delay;

(h) will not constitute a dual or multiple exchange rate;

(i) will not restrict payments or transfers for current transactions, unless the imposition of the measure is in accordance with the procedures contained in the provisions of the Articles of Agreement of the International Monetary Fund; and

(j) will not restrict payment or transfer in connection with foreign direct investment.

Article 7. Transfer of Rights

1. If a Contracting Party or an authorized institution of its State makes a payment to its investor by way of compensation, guarantee, or insurance contract that it has provided for an investment in the territory of the State of the other Contracting Party, the other Contracting Party shall recognize: (a) subrogation to all the rights and claims of the investor of that Contracting Party or of the authorized institution of its State; and

(b) the right of the Contracting Party or its authorized institution to enforce such rights or realize such claims by subrogation to the same extent as the compensated investor.

2. The investor referred to in paragraph 1 shall be precluded from exercising the rights and claims to the extent they arise from subrogation.

3. Subrogation to the rights and obligations of the insured investor shall also apply to the transfer of payments made in accordance with Article 6 of this Agreement.

Article 8. Transparency

1. Each Contracting Party shall ensure that national laws, regulations, procedures, general administrative and judicial decisions, as well as international agreements that may affect the application of this Agreement, are published in a timely manner or otherwise made publicly available. When a Party establishes a policy not governed by laws, regulations, or otherwise specified in this paragraph, and that may affect the application of this Agreement, it shall ensure its publication or otherwise make it publicly available.

2. Each Party shall respond without delay to a specific inquiry and, upon request, shall provide information to the other Party with respect to the matter referred to in paragraph 1 of this Article.

3. The provisions of this Agreement do not prevent a Party from requiring an investor or investment of another Party to provide information in connection with the investment exclusively for informational or statistical purposes. This Agreement does not require a Party to provide or to allow access to:

(a) information relating to the financial affairs and accounts of individual clients, specified investors or investments; or

(b) confidential or proprietary information, including information concerning a particular investor or investment, the disclosure of which would impede law enforcement or is contrary to laws protecting the confidentiality of information or

would jeopardize the legitimate business interests of a particular business entity or individual.

Article 9. Entry and Residence of Personnel

A Contracting Party shall, in accordance with its national legislation governing the entry and residence of aliens, allow natural persons who are investors of the other Contracting Party and personnel employed by such investors to enter and remain in its territory for the purpose of engaging in investment-related activities.

Article 10. Health, Safety, and Environmental Measures

The Contracting Parties agree that investments shall not be encouraged by diminishing measures relating to health, safety, or the environment. Accordingly, A Contracting Party shall not waive or otherwise depart from, or offer to waive or otherwise depart from, such measures in order to encourage investments on the territory of its State.

Article 11. Social Responsibility

Each Contracting Party shall encourage business enterprises operating in the territory of its State to voluntarily apply, in their operations and internal policies, internationally recognized standards of socially responsible business practices that have been approved or endorsed by the Contracting Parties. These principles relate to issues such as labor, the environment, human rights, and anti-corruption.

Article 12. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, where possible, be settled through consultations and negotiations.

2. If the dispute cannot be settled within one hundred and eighty (180) days from the date the written request for settlement was received, it shall, at the request of one of the Contracting Parties, be submitted to an ad hoc arbitral tribunal in accordance with the provisions of this Article.

3. That ad hoc Arbitral Tribunal shall be constituted for each individual case, as follows: within sixty (60) days from the date of receipt of the written request for arbitration, each Contracting Party shall appoint one member of the ad hoc Arbitral Tribunal. These two members shall then select a third member—a national of a third State who, with the consent of both Contracting Parties, shall be appointed as President of the ad hoc arbitral tribunal. The President shall be selected within sixty (60) days from the date of appointment of the first two members.

4. If the necessary appointments are not made within the time limits prescribed in paragraph 3 of this article, either Contracting Party may request the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of a State of either Contracting Party, or if he is otherwise prevented from performing this function, the Vice-President of the International Court of Justice shall be requested to make the necessary appointments. If the Vice-President of the International Court of Justice is a national of a State Party, or if he is also prevented from performing this function, the next most senior Judge of the International Court of Justice, who is not a national of a State Party, shall be invited to make the necessary appointments.

5. The ad hoc Arbitral Tribunal renders its awards by a majority vote. The awards shall be final and binding on both Contracting Parties.

6. The Arbitral Tribunal shall determine its own procedure.

7. Each Contracting Party shall bear the costs of its arbitrator and its representatives in the arbitral proceedings. The costs of the President and the remaining costs shall be borne equally by both Contracting Parties. The ad hoc Arbitral Tribunal may, by its decision, order that one Contracting Party bear a larger share of the costs, and such a decision shall be binding on both Contracting Parties.

Article 13. Settlement of Disputes between a Contracting Party and an Investor of Another Contracting Party

1. This Article applies to a dispute between a Contracting Party and an investor of another Contracting Party concerning an alleged breach by the other Contracting Party of its obligations under this Agreement, which results in damage or loss to the investor or its investment.

2. This Article shall not apply to Articles 10 and 11 of this Agreement.

3. These disputes shall be settled, if possible, through negotiation and consultation. If they cannot be so settled within one hundred eighty (180) days from the date of receipt of a written request for arbitration, the investor may elect to submit the dispute for settlement, for the purposes of paragraph 6 of this Article:

(a) to the competent court or administrative authority of the Party State on the territory of which the investment was made;

(b) to arbitration in accordance with the provisions of:

(i) the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention);

(ii) the Additional Facility Rules of the International Centre for Settlement of Investment Disputes (ICSID Additional Facility Rules), if the application of the ICSID Additional Facility Rules is possible for both Contracting Parties;

(iii) to an ad hoc arbitral tribunal of three members, constituted in accordance with the Arbitration Rules of the Commission on International Trade Law (UNCITRAL); or

(iv) to another arbitral institution or under other arbitral rules if there is agreement of both Contracting Parties.

(c) Unless the Contracting Parties otherwise agree, the United Nations Commission on International Trade Law (UNCITRAL) Transparency Rules in Investor-State Arbitration (the “UNCITRAL Transparency Rules”) shall not apply to arbitrations commenced pursuant to Article 13, paragraph 3(b)(iii) of this Agreement.

4. The Contracting Parties agree that a dispute may be submitted to international arbitration in accordance with the procedures set forth in this Agreement. The consent and submission to arbitration, in accordance with this Article, shall be subject to the following conditions:

(a) Chapter II of the ICSID Convention (jurisdiction of the Center) and the ICSID Additional Facility Rules with respect to the written consent of the Parties to the dispute; and

(b) Article II of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter the “New York Convention”) for agreements in writing.

5. An investor's election to submit a dispute to the court or administrative authority of a Contracting Party against which it has submitted the dispute, or to the arbitral mechanism provided for in paragraph 3 of this Article, is final.

6. Notwithstanding paragraph 5 of this Article, a Contracting Party may, during the arbitral proceedings, submit to the courts of general jurisdiction or administrative tribunals a request for the issuance of a temporary measure to protect its rights and interests, which does not include damages, in accordance with the provisions of paragraph 3(b) of this Article, until the final decision of the arbitral tribunal is rendered.

7. A Contracting Party may file a request for arbitration within ninety (90) days from the date of receipt of the notice of intention to submit the dispute to arbitration. The written notice of intention to submit the dispute to arbitration shall contain:

(a) the name and address of the claimant and, when the claim is filed on behalf of a business entity, its name, address, and place of incorporation;

(b) for each claim, a statement of the provision of this Agreement which it claims has been breached or other relevant provisions;

(c) a statement of the legal and factual basis of the claim; and

(d) a demand for damages, including the approximate amount of damages sought.

8. A dispute shall be submitted to arbitration no later than three (3) years from the date the investor first acquired or should have acquired knowledge of the events giving rise to the dispute.

9. The provisions of the second sentence of paragraph 3 of this Article shall not apply to measures referred to in Article 18 of this Agreement. When an investor of a Party State submits a claim to arbitration in accordance with paragraph 3 of this Article, and the respondent invokes Article 18 of this Agreement, the following provisions shall apply:

(a) The respondent shall, within one hundred twenty (120) days of the date of the submission of the claim to arbitration, in accordance with this Article, submit a written request ad hoc to the Joint Commission established by the Contracting Parties,

to jointly decide whether and to what extent Article 18 of this Agreement provides a basis for the defense of the claim. The respondent shall without delay provide a copy of the request to arbitration, if constituted. The proceedings on the claim shall continue if the conditions set forth in subparagraph (d) of this paragraph are met;

(b) An ad hoc Joint Commission shall be established upon the request of the respondent relying on Article 18 of this Agreement. The Joint Commission shall be composed of government representatives appointed by the Contracting Parties;

(c) The ad hoc Joint Commission shall attempt, in good faith, to render a decision in the manner prescribed in paragraph (a) of this Article. The decision shall be delivered without delay to the parties to the dispute and, if applicable, to the Arbitral Tribunal. The decision shall be binding on the Arbitral Tribunal.

(d) If the ad hoc Joint Commission, within ninety (90) days from the date of receipt of the written request of the respondent for a decision pursuant to paragraph (a) of this provision, fails to render the decision described in this paragraph, the arbitral tribunal shall decide the issues left unresolved by the ad hoc Joint Commission;

(e) The arbitration proceeding under paragraph (a) of this section shall be stayed pending a decision by the Joint Commission and may be resumed with respect to the request:

(i) upon the expiration of ten days from the date the decision of the Joint Commission is delivered to the parties to the dispute and, if constituted, to the Arbitral Tribunal; or

(ii) upon the expiration of ten days from the expiration of the ninety (90) day period referred to in paragraph of this paragraph.

10. The parties to the dispute may agree on the seat of the arbitration in accordance with the arbitral rules applicable under paragraph 3(b) of this Article. If the parties to the dispute do not agree, the tribunal shall determine the seat in accordance with the applicable arbitration rules, provided that the seat is in the territory of a State that is a party to the New York Convention.

11. A party may not set up an counterclaim or demand a set-off by pleading that it has received or will receive, under an insurance policy or a guarantee agreement, indemnity or other compensation for all or part of the amount of the damage.

12. The arbitral tribunal shall state in its award the laws and facts, together with the reasons on which it is based, and may, at the request of a party, provide in the award:

(a) a declaration that the Party has failed to fulfill its obligation under this agreement;

(b) monetary compensation, which shall include interest from the date the damage occurred until the date of payment; (c) in certain cases, restitution in kind, provided that the Contracting Party may pay monetary compensation if restitution in kind is not possible; and

(d) other form of compensation, with the agreement of the parties to the dispute.

13. The arbitral award is final and binding on both parties to the dispute. Each Contracting Party shall, in the territory of its State, ensure the enforcement of the arbitral award, without delay.

Article 14. Application of other Provisions

If the national legislation of any Party, or the obligations under international law which exist or may arise between the Parties under this Agreement, contain provisions of a general or special nature, which apply to investments of investors of another Party, grants treatment more favorable than the treatment provided by this Agreement, such provisions shall, to the extent that they are more favorable, prevail over this Agreement.

Article 15. Application of the Agreement

1. This Agreement shall apply from its date of entry into force to investments in the territory of a Party made in accordance with its national legislation by investors of the other Party, and shall relate to investments made both before and after its entry into force.

2. This Agreement shall not apply to disputes arising from events that occurred or to claims that arose before its entry into force.

Article 16. Denial of Benefits

1. A Contracting Party may deny to an investor of another Contracting Party, when it is a legal person, and to its investment the benefits of this Agreement if that legal person is owned or controlled, directly or indirectly, by persons of a third State which is not a Contracting Party, and the Contracting Party denying the benefits adopts and applies measures prohibiting transactions with a legal or natural person from that third country such that granting the benefits of this Agreement would violate or would not give effect to that measure with respect to the legal person or its investment.

2. A Contracting Party may deny to an investor of another Contracting Party, which is a legal person, and to its investment the benefits of this Agreement if the investor does not have substantial business activities in the territory of that other Contracting Party.

Article 17. Interpretation of the Agreement

The Contracting Parties shall consult and, at the request of the other Contracting Party, provide an interpretation of any provision of this Agreement if a dispute arises between the Contracting Parties or between a Contracting Party and an investor of the other Contracting Party concerning the interpretation of this Agreement. The interpretation of this agreement, agreed upon by the Contracting Parties, shall be binding on the courts referred to in Articles 12 and 13 of this agreement.

Article 18. Exceptions for Financial Services

1. In relation to the application of financial services to investments made in the territory of a Party, this Agreement does not prevent that Party from adopting or applying reasonable precautionary measures, including investor protection, depositors, policyholders, or persons to whom financial institutions owe a fiduciary duty, or for ensuring the integrity and stability of the financial system. If such measures are inconsistent with the provisions of this Agreement, they shall not be used as a means to evade its obligations and duties.

2. This Agreement does not apply to non-discriminatory measures of a general character relating to monetary and credit policy or exchange rate policy adopted by the competent authorities of a Party.

3. Notwithstanding Article 6 of this Agreement, a Contracting Party may, in good faith and in a fair and non-discriminatory manner, prevent or limit a transfer to a financial institution for or on behalf of a branch or an affiliate of that institution or a supplier, by applying measures relating to the maintenance of safety, soundness, reliability, or financial responsibility of financial institutions. For the avoidance of doubt, this paragraph does not preclude any other provision of this Agreement that may permit a Party to limit a transfer.

4. For the avoidance of doubt, nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or applying measures that are necessary to ensure compliance with its national legislation, provided that such measures are not inconsistent with this Agreement, including those relating to the prevention of fraud and deception or which deal with the consequences of non-performance of a financial services contract, provided that the measure does not constitute an arbitrary or unjustifiable discriminatory means between States where similar conditions prevail or a disguised restriction on investment in financial institutions .

Article 19. Security Exceptions

Nothing in this Agreement shall:

(a) require a Party to provide or allow access to information if it considers that its disclosure would be contrary to its essential security interests;

(b) prevent a Party from taking actions it considers necessary to protect its essential security interests;

(i) in connection with the trade in arms, ammunition and war equipment, and the traffic and transactions in other goods, materials, services and technology carried on, directly or indirectly, to supply a military or other security institution,

(ii) undertaken in time of war or other emergencies in international relations, or

(iii) in connection with the implementation of national policy or international agreements with respect to the non-proliferation of nuclear weapons or other nuclear explosive devices;

(c) prevent a Contracting Party from fulfilling its obligations under the Charter of the United Nations for the maintenance of international peace and security.

Article 20. Tax Measures

1. This Agreement does not apply to tax measures other than those measures referred to in this Article and Article 5 of this Agreement.

2. Article 5 of this Agreement applies to all tax measures, unless the claimant, who alleges that the tax measure constitutes an expropriation, submits a request for arbitration in accordance with Articles 12 and 13 of this Agreement. A request for arbitration may be submitted only if:

(a) the applicant, in writing, refers to the competent tax authorities of the Contracting States the question of whether the tax measure involves expropriation; and

(b) within 180 days of the date of the submission of the request referred to in subparagraph (a), the competent authorities of the Contracting States do not reach an agreement that the tax measure does not constitute an expropriation.

3. For the purposes of this Article, the “competent tax authorities” are, for the Republic of Korea, the Ministry of Planning and Finance—National Tax Service and for the Republic of Serbia, the Ministry of Finance—Tax Administration.

4. This Agreement shall not affect the rights and obligations of a Contracting Party arising from tax treaties. In the event of a discrepancy between the provisions of this Agreement and a tax treaty, the tax treaty shall prevail. Whether there is a discrepancy between the Tax Convention between the Contracting Parties and this Agreement is determined exclusively by the competent authorities based on that convention.

Article 21. Entry Into Force, Duration, and Termination of the Agreement

1. This Agreement shall enter into force thirty (30) days after the date of receipt of the last notification by which the Contracting Parties mutually notify each other of the fulfillment of the conditions required by their national legislation for the entry into force of this Agreement.

2. This Agreement is concluded for a period of ten (10) years and will automatically continue in force indefinitely, unless one Contracting Party notifies the other Contracting Party in writing, at least one year before the expiration of the Agreement's term, of its intention to terminate the Agreement.

3. With respect to investments made prior to the termination date of the Agreement, Articles 1-20 of this Agreement shall remain in effect for a period of five (5) years from the date of termination of the Agreement.

4. This Agreement may be amended with the mutual consent of the Contracting Parties. Amendments and supplements to this Agreement shall enter into force in accordance with the same legal procedure provided for in paragraph 1 of this Article.

Any amendment to this Agreement shall not affect the rights or obligations acquired or incurred prior to its entry into force or the termination of the Agreement.

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

Signed in duplicate at Seoul on this 8th day of September 2023, each in the Serbian, Korean, and English languages, all texts being equally authentic. In case of any difference in interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF SERBIA

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

Annex I. Expropriation

The Contracting Parties affirm their common position that:

1. A measure or series of measures of a Contracting Party does not constitute an expropriation unless they affect the substance of investment rights.

2. Article 5 of this Agreement applies to two situations. The first is direct expropriation, when an investment is nationalized or otherwise directly expropriated through a formal transfer of ownership rights or a permanent seizure.

3. The second situation to which Article 5 of this Agreement applies is indirect expropriation, when the action or series of actions of a Party has the same effect as a direct expropriation without a formal transfer of ownership rights or a permanent seizure.

(a) The determination of whether a measure or series of measures by a Party constitutes a indirect expropriation in a particular case is made on a case-by-case, fact-based inquiry, which includes, among other elements:

(i) the economic impact of the state measures, although the mere fact that a measure or series of measures by a Party has, in and of itself, an adverse effect on the economic value of an investment does not mean that an indirect expropriation has occurred,

(ii) the extent to which the action or series of actions affects different, reasonable expectations regarding the investment. For greater precision, whether an investor's expectations regarding the expected results of the investment are reasonable or not also depend in part on the nature and scope of government regulations in the relevant sector, and

(iii) the nature of the government's action or series of actions, including their purpose and content. Relevant considerations may also include whether the state's action imposes a greater burden on an individual investor or investment than was expected, undertaken in the public interest.

(b) Exceptionally, where an activity or series of activities is serious or disproportionate in relation to its purpose or effect, a nondiscriminatory measure of a Party, which is prescribed and applied in order to protect legitimate public interests, such as health, safety, the environment, and real estate price stabilization, does not constitute indirect expropriation. For the sake of clarity, the list of “legitimate public interests” is not exhaustive.

4. The concept of indirect expropriation is not intended to challenge government measures adopted in pursuit of a Party's legitimate objectives that would otherwise be inconsistent with other provisions of this Agreement.

Annex II. Taxation and Expropriation

The determination of whether a tax measure in a particular situation constitutes an expropriation is made on a case-by-case, fact-based inquiry, which takes into account all relevant elements related to the investment, including the elements contained in Annex I of this Agreement as well as the fact that:

(a) the imposition of a tax obligation does not constitute an expropriation. The introduction or imposition of a new tax measure in more than one area with respect to an investment does not constitute an expropriation;

(b) a tax measure that is consistent with internationally recognized principles of tax policy and practice should not constitute an expropriation. In particular, tax measures aimed at preventing tax evasion or tax avoidance do not constitute an expropriation;

(c) a tax measure applied on a non-discriminatory basis, as opposed to tax measures directed at investors of a certain nationality or against certain taxpayers, does not constitute an expropriation; and

(d) a general tax measure does not constitute an expropriation if it was in effect at the time of the investment and was publicly available.