

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

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

Desiring to intensify economic cooperation between the two States,

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 protection of investments on the basis of this Agreement stimulates business initiative in this field,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) "investments" means every kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party and, in particular, though not exclusively, includes:

- (a) Movable and immovable property and any other property rights such as mortgages, liens or pledges;
- (b) Shares in, stocks and debentures of, and any other forms of participation in a company or any business enterprise, in accordance with the law of the other Contracting Party in the territory in which the property at issue is placed;
- (c) Claims to money or to any performance under contract having a financial value;
- (d) Intellectual property rights including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, technical processes, trade secrets and know-how, and goodwill;
- (e) Any right conferred by law or under contract and any licences and permits pursuant to law, including the right to search for, cultivate, extract or exploit natural resources;

Any change of the form in which assets are invested or reinvested shall not affect their character as an investment.

(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 of one Contracting Party who invest in the territory of the other Contracting Party:

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

(b) The term "juridical persons" means any companies, organizations, corporations or associations incorporated or constituted in accordance with the laws and regulations of that Contracting Party.

(4) "territory" means the territory of each Contracting Party in accordance with its respective legislation and international law.

(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, as far as possible, favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its legislation.
- (2) Investments made by investors of each Contracting Party shall 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, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.
- (4) Each Contracting Party shall strive to bestow the necessary authorizations relative to the investments and shall permit, in accordance with its legislation, the execution of the labor contract, or commercial, financial, administrative and technical assistance.
- (5) Each Contracting Party shall equally strive, each time that is necessary, to bestow the required authorizations, in relation with the consultants or experts' activities hired by the investors of the other Contracting Party.

Article 3. Treatment of Investments

- (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, 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, which is more favourable to investors.
- (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 investors or to investments of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of its present or future participation in a free trade zone, a customs union, a common market or any other similar economic union.
- (4) The treatment of the investments bestowed in accordance with this Article shall not extend to deductions, fiscal exemptions and any other similar concessions granted by the Contracting Parties to investments of any third State by virtue of an agreement on avoidance of double taxation or any other agreements relative to taxation.

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 armed forces; or
 - (b) Destruction of their property by its armed forces 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 which would be accorded under the same circumstances to investors of the other Contracting Party or to investors of any third State. 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 measure 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 social interest, 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. The market value shall be fixed in relations to the economic situation existing before the action of expropriation was taken. Such compensation 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.

(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 where the investment was realized, 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, the provisions of this Article shall be applied in proportion to their investments or share.

Article 6. Transfers

(1) Each Contracting Party shall guarantee the free transfer of payments related to investments and returns to investors of the other Contracting Party after they have fulfilled their tax and financial obligation, provided that such requirement on tax and financial obligation shall be applied in good faith and on an equitable and non-discriminatory basis. Such transfers shall include, in particular, though not exclusively:

(a) Net profit, capital gains, dividends, interest, royalties, fees and any other 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) 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, 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 transfers, whichever is more favourable to investors.

(3) Each Contracting Party shall provide to the investors of the other Contracting Party or to the companies in which the investors of the other Contracting Party have shares, the free access of the convertible currency for carrying out the transfer protected in this Article, in accordance with the practice of international financial centers.

Article 7. Subrogation

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 a legal transaction in that State, of any right or claim 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.

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 including expropriation or nationalization 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 investment has been made shall be available for investors of the other Contracting Party on the basis of treatment no less favourable than that accorded to investments of its own investors or investors of any third State, whichever is more favourable to investors.

(3) If the dispute cannot be settled within six(6) months from the date on which the dispute has been raised by either party, it shall be submitted upon request of either of the parties to the International Centre for Settlement of Investment Disputes (ICSID) established by the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States (in the event Nicaragua becomes a party to this Convention. Until that moment the dispute shall be submitted to conciliation or arbitration procedure to be mutually agreed upon on the basis of the Convention or Additional Facility).

(4) The award made by ICSID 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 consultation or diplomatic channels.

(2) If any dispute cannot be settled within six(6) months, it shall, at 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(2) 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, who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within two(2) 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. 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 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. The Arbitral Tribunal shall determine its own procedure.

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 the more 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.

(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 provisions of this Agreement shall apply to investments which have been made before or after the date of the entry into force of this Agreement. The provisions of this Agreement shall not apply to any disputes that have arisen from legal governmental action which took place before the date of the entry into force of this Agreement.

Article 12. Entry Into Force, Duration and Termination

(1) This Agreement shall enter into force thirty(30) days after the date of the last notification that all legal requirements for its entry into force have been fulfilled.

(2) This Agreement shall remain in force for a period of ten(10) years and shall remain in force thereafter for the same period, 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 Articles 1 to 11 of this Agreement shall remain in force for a further period of ten(10) years from the date of termination.

(4) This Agreement may be revised by mutual consent. Any revision or termination of this Agreement shall be effected without prejudice to any rights or obligations accruing or incurred under this Agreement prior to the effective date of such revision or termination.

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

DONE in duplicate at Seoul on the 15th day of May 2000, in the Korean, Spanish 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 NICARAGUA