

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

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

Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create favourable conditions for investments by investors of one State in the territory of the other State, and

Recognizing that the encouragement and protection of investments on the basis of the present Agreement stimulate business initiatives in this field,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investment" means every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party, and includes, in particular, though not exclusively:

- (a) Movable and immovable property as well as any related property rights such as mortgages, liens or pledges;
- (b) Shares, stock, bonds and debentures of, and any other form of participation in, a company or business enterprise of joint venture;
- (c) Claims to money or to any performance having an economic value related with an investment;
- (d) Intellectual property rights, including copyrights, trademarks, patents, industrial designs, technical processes, know-how, trade secrets and trade names, and goodwill;
- (e) Any right conferred by law or under contract, including the right to search for, extract, cultivate or exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their character as investment.

(2) The term "investor" means with regard to either Contracting Party:

- (a) A natural person who is a national of that Contracting Party in accordance with its laws;
- (b) Any corporations, companies, firms, enterprises, organizations and associations incorporated or constituted under the law in force in the territory of that Contracting Party; provided that the natural person, corporation, company, firm, enterprise, organization or association is competent, in accordance with the laws of that Contracting Party, to make investments in the territory of the other Contracting Party.

(3) The term "returns" means the amount yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties or fees.

(4) The term "territory" means the territory of each Contracting Party, as well as those maritime areas, including the exclusive economic zone and the continental shelf adjacent to the territorial sea of each Contracting Party over which each Contracting Party exercises or will exercise sovereign rights, jurisdiction and other rights in accordance with international law including the 1982 United Nations Convention on the Law of the Sea.

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.

(2) Investments of 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 management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

(4) Each Contracting Party shall observe any obligation it may have entered into consistently with this Agreement with regard to investments in its territory by investors of the other Contracting Party.

Article 3. Treatment of Investments

(1) Neither Contracting Party shall in its territory subject investments or returns of investors of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own investors or investors of any third State.

(2) Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own investors or investors of any third State.

Article 4. Compensation for Damages or Losses

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

(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 not less favorable than would be accorded under the same circumstances to investors of the other Contracting Party or of any third State. Resulting payments shall be freely transferable without delay

Article 5. Expropriation

(1) Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose. The expropriation shall be carried out under due process of law, on a non-discriminatory basis, and shall be accompanied by prompt, adequate and effective compensation. Such compensation shall amount to the real value of the investment expropriated immediately before the expropriation or before impending expropriation became public knowledge, whichever is the earlier, shall be made within two months of the date of expropriation, after which interest at a normal commercial rate shall accrue until the date of payment, and shall be effectively realizable and be freely transferable.

(2) The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and other valuation of his or its investment in accordance with the principles set out in paragraph (1) of this Article.

(3) 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 own shares or other forms of participation, the provisions of paragraphs (1) and (2) of this Article shall be applied.

Article 6. Repatriation of Investments and Returns

(1) Each Contracting Party shall guarantee to the investors of the other Contracting Party the transfer out of its territory without delay in any freely convertible currency of:

- (a) The returns accruing from an investment;
- (b) The proceeds accruing from the sale or the total or partial liquidation of an investment made by an investor of the other Contracting Party;
- (c) Funds in repayment of borrowings related to an investment;
- (d) The earnings of nationals of the other Contracting Party subject to the laws and regulations of the Contracting Party where an investment has been made;
- (e) Initial capital and complementary amounts necessary to increase an investment. The procedure mentioned in this Article must be fair and nondiscriminatory.

(2) For the purpose of this Agreement, exchange rate shall be the rate applicable on the date of transfer pursuant to the exchange regulations in force of the Contracting Party in whose territory the investment was made.

Article 7. Exceptions

The provisions of Articles 3 and 4 of this Agreement 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 existing or future customs union or free trade area or common external tariff area or monetary union or similar international 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 8. Subrogation

(1) If a Contracting Party or its designated agency makes a payment to the benefit of the investor of the Contracting Party under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment to the former Contracting Party or its designated agency by law or legal transaction of all the rights and claims of the investor to whom compensation was paid in full.

(2) A Contracting Party or its designated agency shall be entitled to exercise any rights and claims to the same extent which the investor would have been entitled to exercise.

(3) In case of subrogation determined in the paragraphs (1) and (2) of this Article, investor will not make any claims if he is not authorised by the Contracting Party or any of its institutions.

Article 9. 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 of investments shall, as far as possible, be settled:

- (a) Amicably through negotiations between the parties to the dispute; or
- (b) Through recourse to any other local remedy, save that provided under paragraph (2) of this Article, available under the laws and regulations of the Contracting Party in the territory of which the investment has been made.

(2) Any such dispute which has not been settled under paragraph (1) of this Article within a period of six(6) months from written notification of a claim may, if both Parties agree, be submitted for resolution, in accordance with the law of the Contracting Party which has admitted the investment to that Contracting Party's competent judicial authority.

(3) Should the Parties fail to agree on a dispute settlement procedure provided under paragraph (2) of this Article, the dispute shall be referred to international arbitration upon the request of either Party. The arbitration procedure shall be as

follows:

(a) The International Center for Settlement of Investment Disputes, if the Contracting Party of the investor and the other Contracting Party are both Parties to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, 1965; or

(b) The ICSID Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings; or

(c) An ad-hoc arbitral tribunal in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, 1976.

Article 10. Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel.

(2) If a dispute between the Contracting Parties cannot thus be settled within six(6) months, it shall upon the request of either Contracting Party be submitted to an Arbitral Tribunal.

(3) The Arbitral Tribunal shall be constituted for each individual case in the following way: Within two(2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. The appointed 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 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, either Contracting Party may, in the absence of other agreements, invite the President of the International Court of Justice to make such appointments. If the President is a citizen of either Contracting Party, or if he otherwise is prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a citizen of either Contracting Party, or if he too is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a citizen of either Contracting Party shall be invited to make the necessary appointments.

(5) The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding upon both Contracting Parties. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The Arbitral Tribunal shall determine its own procedure.

Article 11. Application of Agreement

This Agreement shall apply to all investments, whether made before or after its entry into force.

Article 12. 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, nothing in this Agreement shall prevent an investor of one Contracting Party who owns investments in the territory of the other Contracting Party 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, is more favourable than that accorded by this Agreement, the more favourable treatment shall be accorded.

Article 13. Consultations

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

Article 14. Entry Into Force, Duration, Termination and Amendments

(1) This Agreement shall enter into force on the day when the Contracting Parties notify each other that all legal requirements for its entry into force have been fulfilled.

(2) This Agreement shall remain in force for a period of fifteen(15) years. Thereafter, it shall continue to be in force until the expiration of six(6) months from the date on which either Contracting Party shall have given written notice of termination to the other Contracting Party.

(3) In respect of investment made whilst the Agreement is in force, its provisions shall remain in force for a period of ten(10) years from the date of termination.

(4) This Agreement may be amended by mutual consent of the Contracting Parties.

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

DONE in duplicate at Almaty this 20th day of March 1996 in the Korean, Kazakh and English languages, all three texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

Kim Chang-keun

FOR THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN

Tokaev K. K.