

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE REPUBLIC OF PERU FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENT

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

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

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

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

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purpose of this Agreement:

(1) "investments" shall mean every kind of asset, invested by an investor of one Contracting Party, provided that they have been made in accordance with the laws and regulations of the other Contracting Party, and shall include in particular, though not exclusively:

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

(b) Shares, stocks and any other form of participation in a company, or in companies;

(c) Claims to money or to any performance under contract having a financial value;

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

(e) Business concessions of economic value necessary for conducting economic activities, conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

(2) The provisions of this Agreement shall apply to the rights and obligations of both Contracting Parties with respect to investments made before or after the date of entry into force of this Agreement.

(3) Any change in form in which assets were invested does not affect their character as investment under this Agreement.

(4) "Returns" shall mean the amount yielded by an investment, and in particular, though not exclusively, shall include profits, interests, dividends, royalties or other current incomes.

(5) "Investor" shall mean, with respect to either Contracting Party:

(a) Natural persons having the nationality of that Contracting Party in accordance with its laws; and

(b) Any companies, firms, organizations and associations incorporated or constituted in accordance with the laws of that Contracting Party.

(6) "Territory" shall mean:

(a) With respect to the Republic of Korea, the territory of the Republic of Korea, and

(b) With respect to the Republic of Peru, the territory of the Republic of Peru.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall promote within its territory investments made by investors of the other Contracting Party, create favourable conditions for investors of the other Contracting Party for investment and will 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.

Article 3. National and Most-favoured-nation Treatment

(1) Investments of investors of a Contracting Party in the territory of the other Contracting Party, and also the returns therefrom, shall receive treatment which is fair and equitable and not less favourable than that accorded in respect of the investments and returns of the investors of the latter Contracting Party or of any third State.

(2) Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards the management, use, enjoyment or disposal of their investments, treatment which is fair and equitable and not less favourable than that which it accords to its own investors or to the investors of any third State.

Article 4. Exceptions

The provisions of Article 3 relative to the granting of treatment not less favourable than that accorded to investors of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other 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 a common external tariff area or a monetary union or similar international agreement including the organization for mutual economic assistance 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 or any domestic legislation relating wholly or mainly to taxation.

Article 5. Compensation for Losses

Investors of each Contracting Party, whose investments in the territory of the other Contracting Party suffered losses owing to war or other armed conflict, revolution, state of emergency or other similar events, shall, as regards compensation or other forms of settlement, be accorded by the other Contracting Party treatment not less favourable than that which the latter Contracting Party accords to its own investors or to the investors of any third State.

Article 6. 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 in the territory of the other Contracting Party, except for a public purpose, in accordance with legal procedures and against compensation. Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge, shall include interest from the date of expropriation and be freely transferable. Compensation shall be effective, adequate and be paid out without an undue delay.

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

Article 7. Repatriation of Investment

(1) Each Contracting Party shall guarantee, subject to the provisions of paragraph 2 of this Article, to investors of the other Contracting Party without undue delay, the unrestricted transfer in convertible currency of proceeds connected with the investment, in particular:

- (a) Capital and additional sums for the maintenance or development of the investment;
- (b) Sums appropriated for the coverage of expenses connected with the management of the investment;
- (c) Loan repayments;
- (d) Returns; and
- (e) Proceeds resulting from the total or partial liquidation of an investment.

(2) Transfer of proceeds mentioned in paragraph 1 of this Article may be effected under the condition that the transferred amount originated in the investment or in its returns.

Article 8. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) Any dispute between either Contracting Party and an investor of the other Contracting Party including expropriation or nationalisation of an investment shall, as far as possible, be settled by the disputing Parties in an amicable way.

(2) The legal remedies under the laws and regulations of one Contracting Party in the territory of which the investment has been made shall be available for the investor 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 the investor.

(3) The Contracting Party in whose territory the investment is located may require that before recourse is made to arbitration, solution should be searched through local remedies during a period not longer than six(6) months.

(4) If local remedies cannot be exhausted within the above indicated period of six(6) months or if the Contracting Party does not require that the preceding paragraphs be applied, or if the dispute can not be settled within six(6) months from the date one of the Parties raised the dispute, it shall, upon request of either the investor or the Contracting Party, be submitted to the International Center for the 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,(1) provided that the Republic of Peru 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 Washington Convention.

Article 9. Disputes between the Contracting Parties

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

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

(3) Such an Arbitral Tribunal shall be constituted for each individual case in the following way;

Within two 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 citizen of a third State, who on the approval of the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within two months from the date of appointment of the other 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 on both Contracting Parties. Each Contracting Party shall bear the costs of its own member of the Tribunal and of its representation in the arbitral proceedings; the costs of the Chairman and the remaining costs shall be borne in equal parts by the 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, and this award shall be binding on both Contracting Parties. The Tribunal shall determine its own procedure.

Article 10. Subrogation

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. The latter Contracting Party shall also recognize, except the right of that Contracting Party to deduct any unpaid taxes or public obligations due from the investor, the acquirement by the first Contracting Party of any rights and claims to which that Contracting Party will be entitled to the same extent as its legal predecessor.

Article 11. Entry Into Force, Duration and Termination

(1) Each Contracting Party 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 days after the date of the second notification.

(2) This Agreement shall be effective for an indefinite period. It may be terminated upon written notice by each Contracting Party; in such case it shall terminate upon the expiration of six(6) months from the date of the written notice. 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.

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

DONE in duplicate at Seoul, on the 3rd day of June 1993 in the Korean, Spanish, and English languages, all three texts being equally authentic. In case of divergence of interpretation between the texts of this Agreement, the English text shall prevail.

For the Government of the Republic of Korea:

For the Government of the Republic of Peru: