

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

The Government of the Republic of Korea and the Government of Jamaica (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 stimulates business initiative in this field,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investments" shall comprise every kind of asset invested before or after the entry into force of this Agreement by natural or juridical persons 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 property rights such as mortgages, liens or pledges, usufructs and similar right;

(b) Shares, stocks and debentures of companies or other rights or interests in such companies and government-issued securities;

(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 and trade names, and goodwill; and

(e) Any right conferred by law or under contract and any licences and permits pursuant to law, 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 classification as an investment.

(2) The term "investors" shall mean any natural or juridical persons who invest in the territory of the other Contracting Party.

(a) The term "natural persons" shall mean with respect to either Contracting Party natural persons having the nationality or citizenship of that Party in accordance with its laws.

(b) The term "juridical persons" shall mean with respect to either Contracting Party any entity incorporated or constituted in accordance with, and recognized as a juridical person by its laws, such as public institutions, corporations, authorities, foundations, companies and partnerships irrespective of whether their liabilities are limited or otherwise, and whether or not organized for pecuniary profit.

(3) The term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties or fees.

(4) The term "territory" shall mean the territory of the Republic of Korea or the territory of Jamaica respectively, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limits of the territorial sea of either of the

above territories, over which the State concerned exercises, in accordance with international law, sovereign rights or jurisdiction for the purpose of exploration and exploitation of the natural resources of such area.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall encourage, promote and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall consult with each other as to the most effective ways to achieve that purpose.

(2) Each Contracting Party shall admit such investments subject to its laws and regulations.

(3) 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.

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 not 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 not less favourable than that which it accords to its own investors or to the 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 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 customs union or free trade area, a common external tariff area, a monetary union or similar international agreement or other forms of regional co-operation 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. Compensation for Damage or Losses

(1) When investments by investors of either Contracting Party suffer losses owing to war, armed conflict, a state of national emergency, revolt, insurrection, riot or similar events in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not 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 damage or 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 adequate compensation for the damage or losses sustained during the period of the requisitioning or as a result of the destruction of the property. Resulting payments shall be freely transferable without delay.

Article 5. Expropriation

(1) Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization 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 the provision for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before expropriation or the impending expropriation became publicly announced, shall include interest at a commercially reasonable rate from the date of expropriation and shall be made without delay, be effectively realizable and be freely transferable. The determination of the market value shall not reflect any change in the value of the investment attributable

to the expropriation or the public knowledge of the expropriation measure before it was publicly announced.

(2) Investors affected shall have a right to prompt review by a judicial or other independent authority of the expropriating Contracting Party, of their case and of the valuation of their investments in accordance with the principles set out in the provisions of paragraph (1) of this Article.

(3) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares or debentures, it shall ensure that the provisions of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investments to such investors of the other Contracting Party who are owners of those shares or debentures.

Article 6. Transfers

(1) Each Contracting Party shall grant without delay to investors of the other Contracting Party an unrestricted right to transfer payments related to investments, in particular, though not exclusively, of:

(a) Any kind of returns accruing from investments by investors of the other Contracting Party;

(b) Proceeds accruing from the sale or the total or partial liquidation of any investments made by investors of the other Contracting Party;

(c) Funds in repayment of borrowing related to an investment;

(d) Earnings of nationals of the other Contracting Party who are allowed to work in connection with investments in its territory; and

(e) Amounts spent for the maintenance of investments.

(2) Transfers shall be made in a freely convertible currency at the prevailing market rate of exchange on the date of the transfer with respect to spot transactions in the currency to be transferred.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this Article either Contracting Party may maintain laws and regulations (a) requiring reports of currency transfer; and (b) imposing income taxes by such means as a withholding tax applicable to dividends or other transfers. Furthermore, either Contracting Party may protect the rights of creditors, or ensure the satisfaction of judgements in adjudicatory proceedings, or prevent fraudulent transfers, through the equitable, nondiscriminatory and good faith application of its law.

Article 7. Subrogation

If a Contracting Party or its designated agency makes a payment to its own investors under a guarantee it has 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 its territory, of any right or claim by investors to the former Contracting Party or its designated agency; as well as

(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 the investors and shall assume the obligations related to the investments.

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 relating to investments under this Agreement shall be settled amicably, as far as possible, by the parties to the dispute through consultation and negotiation.

(2) The legal procedures and 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) If the dispute cannot thus be settled within nine (9) months from the date on which the dispute has been raised formally by either party, it shall be submitted upon request of the investor or the Contracting Party to the International Centre for the

Settlement of Investment Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature in Washington on 18 March 1965.

(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 negotiation.

(2) If the dispute cannot be so 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 the 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 as 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 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 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 10. 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, or by general principles of international law, 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 of whichever rules are the more favourable to his or its 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. Entry Into Force, Duration and Termination

(1) This Agreement shall enter into force on the date on which the Contracting Parties have notified each other that the legal requirements for entry into force of this Agreement have been completed.

(2) This Agreement shall remain in force for a period of ten (10) years and shall continue in force thereafter unless, one year before the expiry of the initial or any subsequent periods, either Contracting Party notifies the other in writing of its intention to terminate this 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 twenty (20) 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 in Kingston on the tenth day of June 2003, in the Korean 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 JAMAICA