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

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

Desiring to intensify their economic co-operation to the mutual benefit of both States on a long term basis,

Having as their objective the creation of 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, and

Recognizing that the promotion and protection of investments on the basis of this Agreement will stimulate the individual business initiative and will increase prosperity in both States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. "investments" means every kind of asset 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 properly and any other property rights such as mortgages, liens, leases or pledges,

(b) shares in, stocks and debentures of, and any other form of participation in a company or any business enterprise and rights or interest derived therefrom,

(c) claims to money or to any performance under a contract having an economic value,

(d) intellectual properly rights including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, technical processes, trade secrets and know-how, and goodwill, and

(e) business concessions having an economic value conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any change of the form in which assets arc 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 either Contracting Party who invest in the territory of the other Contracting Party:

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

(b) the term "juridical persons" means any entity such as companies, public institutions, authorities, foundations, partnerships, firms, establishments, organizations, corporations or associations incorporated or constituted in accordance with the laws and regulations of the former Contracting Party;

4. "territory" means:

(a) in respect for the Republic of Azerbaijan - the territory of the Republic of Azerbaijan,

(b) in respect for the Republic of Korea - the territory of the Republic of Korea;

5. "freely convertible currency" means 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 favorable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. Investments made by 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 arbitrary or discriminatory measures the operation, management, maintenance, use, enjoyment or disposal of investments in its territory by 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 no less favorable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third Stale, whichever is more favorable 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 no less favorable than that which it accords to its own investors or to investors of any third State, whichever is more favorable to investors.

3. The provisions of paragraphs I and 2 of this Article 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 resulting from;

(a) its participation in any existing or future free trade area, customs union, economic union, regional economic integration agreement or similar international agreement, or

(b) any international agreement or arrangement relating wholly or mainly 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 situation in the territory of the other Contracting Parly, shall be accorded by the latter Contracting Parly treatment, as regards restitution, indemnification, compensation or other forms of settlement, no less favorable tiian 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 the latter Contracting Party's forces or authorities; or

(b) destruction of their property by the latter Contracting Party's 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 no less favorable than that which would be accorded under the same circumstances to an investor of the latter Contracting Party or to an investor of any third Stale. 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 measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Parly except for public purpose and against prompt, adequate and effective compensation. The expropriation shall be carried out on a non-discriminalory basis in accordance with due process of law.

2. Such compensation shall amount to the fair market value of the expropriated investments immediately before the expropriation was made or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at the applicable commercial rate from the date of expropriation until the dale of payment, and shall be made without undue delay, be effectively realizable, and be freely transferable. In both expropriation and compensation, treatment no less favorable than that which the Contracting Party accords to its own investors ot to investors of any third Slate shall be accorded.

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 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 own shares, debentures or other forms of participation, the provision of this Article shall be applied.

Article 6. Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of their investments and returns. Such transfers shall include, in particular, though not exclusively:

(a) net profit, capital gains, dividends, interest, royalties, fees and any other current 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 arc allowed to work in connection with investments in its territory;

(e) additional funds necessary for the maintenance or development of the existing investments;

(f) amounts spent for the management of the investment in the territory of the other Contracting Party or a third Stale; and

(g) compensation pursuant to Articles 4 and 5.

2. All transfers under this Agreement shall be made in a freely convertible currency, without undue restriction or delay, at the market exchange rate, prevailing at the date of the transfer.

Article 7. Subrogation

1. If a Contracting Party or its designated agency makes a payment to its own investors under a guarantee which it accords 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 rights or claims from investors to the former Contracting Party or its designated agency, and

(b) that the former Contracting Parly or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of those investors.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

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 derived from an alleged breach of an obligation under this Agreement 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 to investors of the other Contracting Party on the basis of treatment no less favorable than that which would be accorded to investments of its own investors or investors of any third State, whichever is more favorable to investors.

3. If a dispute cannot be settled within six (6) months from the date on which the dispute has been raised by either party, and if the investor waives the rights to initiate any proceedings under paragraph 2 of this Article with respect to the same dispute, the dispute shall be submitted upon request of the investor of the Contracting Party:

(a) 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 Stales, or

(b) to the Additional Facility of the Centre, if ICSID is not available, or

(c) in accordance with the UNCITRAL Arbitration Rules, or

(d) if agreed by both parties to the dispute, to any other arbitration institution or in accordance with any other arbitration rules.

4. The investor, notwithstanding that it may have submitted the dispute to the international arbitration under paragraph 3 may seek interim injunctive relief, not involving the payment of damages, before the judicial or administrative tribunals of the Contracting Party that is a party to the dispute for the preservation of its rights and interests.

5. Each Contracting Party hereby consents to the submission of a dispute to arbitration in accordance with the procedures set out in this Agreement.

6. The award made by the international arbitration in this Article 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 dale 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 Internationa! Court of Justice to make such appointments. If the President is a national of cither Contracting Party or otherw4.se prevented from discharging the said function, the VicePresident shall be invited to make the appointments. If the Vice-President is also a national of either Contracting Parly 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. Bach 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.

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 favorable to 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 favorable treatment shall be accorded.

3. Each Contracting Party shall observe any other obligation that may have entered into force with regard to investments in its territory by investors of the other Contracting Party.

Article 11. Application of the Agreement

The Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning investments which was settled before its entry into force.

Article 12. Entry Into Force, Duration and Termination

I. The Contracting Parlies shall notify each other when the internal procedures necessary for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the thirtieth day following the date of receipt of the last notification.

2. This Agreement shall remain in force for a period of twenty (20) years and shall remain in force thereafter indefinitely 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 Article 1 to 11 of this Agreement Shall Remain In Force for a Further Period of Twenty (20) Years from the Date of the Termination.

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

DONE in duplicate in Seoul on 23 April 2007, in the Azerbaijani, 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 Azerbaijan

For the Government of the Republic of Korea