

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED MEXICAN STATES AND THE GOVERNMENT OF THE REPUBLIC OF KOREA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

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

DESIRING to create favourable conditions for greater economic cooperation between them and, in particular, for investments by investors of one Contracting Party in the territory of the other Contracting Party based on the principles of equality and mutual benefit,

RECOGNIZING that the promotion and reciprocal protection of investments on the basis of this Agreement will be conducive to stimulating individual business initiative and will increase prosperity in both States,

Have agreed as follows:

## **Chapter I. General Provisions**

### **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 property, acquired or used for economic purposes, as well as any other property rights in rem, such as mortgages, liens, leases, pledges, and similar rights; in rem, such as mortgages, liens, leases, pledges, and similar rights;

(b) Shares in, stocks 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 contract having an economic value such as bonds, debentures, loans and other forms of debt of an enterprise, including rights derived therefrom, where the enterprise is an affiliate of the investor, or where the original maturity of the loans is at least of three years.

But investment does not include, a payment obligation from, or the granting of a credit to a Contracting Party or to a state enterprise;

(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) Business concessions having an economic value conferred by law or under contract; and

(f) An enterprise that is a juridical person constituted or organised under the applicable laws of a Contracting Party.

But investment does not mean, claims to money that arise solely from:

(i) Commercial contracts for the sale of goods or services by an investor in the territory of a Contracting Party to a company or a business enterprise in the territory of the other Contracting Party, or

(ii) The extension of credit in connection with a commercial transaction, such as trade financing other than a loan covered by subparagraph (c), or subparagraph (c), or

(iii) Any other claims to money,

That do not involve the kinds of interests set out in subparagraphs (a) through (e).

(2) "returns" means the amounts yielded by investments and, in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and all kind of fees.

(3) "investors" means a Contracting Party as well as any natural or juridical persons of a 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 entity which is incorporated or constituted in accordance with the laws and regulations of that Contracting Party, including an enterprise that is owned or controlled by the former Contracting Party.

(4) "territory" means the territory of the Republic of Korea or the territory of the United Mexican States, as defined by their respective laws and regulations, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea over which the State concerned exercises, in accordance with international law, sovereign rights or jurisdiction.

## **Article 2. Promotion and Protection of the 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 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. 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.

(3) Each Contracting Party may require a juridical person in its territory, to provide routine information for statistical purposes concerning the investment. Each Contracting Party shall protect business information from any disclosure that would prejudice the competitive position of the investment.

## **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 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 the operation, management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to investors.

(3) This Agreement shall not be applicable to tax measures. Nothing in this Agreement shall affect the rights and obligations of either Contracting Party derived from any tax convention. In the event of any inconsistency between the provisions of this Agreement and any tax convention, the provisions of the latter shall prevail.

(4) The provisions of paragraphs (1) 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 its participation in any existing or future free trade area, customs union, economic union, regional economic integration agreement or similar international agreement. paragraphs (1) 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 its participation in any existing or future free trade area, customs union, economic union, regional economic integration agreement or similar international agreement.

## **Article 4. Compensation for Losses**

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, whichever is more favourable to investors. Resulting payments shall be freely transferable.

## **Article 5. Expropriation**

(1) Investments of investors of one Contracting Party shall not be nationalized, expropriated or otherwise subjected to any other measures 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 against just compensation. The expropriation shall be carried out on a non-discriminatory basis in accordance with legal procedures.

(2) Such a compensation shall amount to the fair market value of the expropriated investments immediately before expropriation was taken or before impending expropriation became public knowledge, whichever is the earlier, 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, freely convertible and transferable.

Valuation criteria shall include the going concern value, asset value, including declared tax value of tangible property, and other criteria, as appropriate, to determine the fair market value.

(3) Investors of one Contracting Party affected by expropriation shall have the right under the laws and regulations of the expropriating Contracting Party to the prompt review by a judicial or other independent authority of that Contracting Party, of their case and of the valuation of their investments in accordance with the principles set out in this Article.

## **Article 6. Transfers**

(1) Each Contracting Party shall, in accordance with its laws and regulations and rules of international law, guarantee to investors of the other Contracting Party the right to 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 one Contracting Party who are allowed to work in connection with investments in the territory of the other Contracting Party;
- (e) Additional funds necessary for the maintenance development of the existing investments; or
- (f) Compensation pursuant to Articles 4 and 5; and Articles 4 and 5; and
- (g) Payments arising out of the settlement of a dispute.

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

(3) Notwithstanding paragraphs 1 and 2 above, a Contracting Party may prevent a transfer through the equitable, non-discriminatory and in good faith application of its laws relating to: paragraphs 1 and 2 above, a Contracting Party may prevent a transfer through the equitable, non-discriminatory and in good faith application of its laws relating to:

- (a) Bankruptcy, insolvency or other legal proceedings to protect the rights of creditors;
- (b) Issuing, trading or dealing in securities;
- (c) Criminal or administrative violations; or
- (d) Ensuring the satisfaction of judgements in adjudicatory proceedings.

## **Chapter II. Settlement of Disputes**

### **Part One**

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

## Article 7. Means of Settlement

This Part applies to disputes between a Contracting Party and an investor of the other Contracting Party derived from an alleged breach of an obligation under this Agreement. Disputes should, if possible, be settled by negotiation or consultation. If it is not so settled, the investor may choose to submit it for resolution:

- (a) To any competent courts or administrative tribunals of the Contracting Party, party to the dispute;
- (b) In accordance with any applicable previously agreed dispute settlement procedure; or
- (c) By arbitration in accordance with Article 8. Article 8.

## Article 8. Arbitration: Scope and Standing and Time Periods

(1) An investor of a Contracting Party may submit to arbitration a claim that the other Contracting Party has breached an obligation under this Agreement and that the investor has incurred loss or damage by reason of, or arising out of, that breach. Likewise, an investor of a Contracting Party, on behalf of an enterprise of the other Contracting Party that the investor owns or controls, may submit to arbitration a claim that the other Contracting Party has breached an obligation under this Agreement and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach. An investment may not make a claim under this Part.

(2) Provided that neither the investor concerned nor the enterprise of the other Contracting Party that such an investor owns or controls, has submitted the dispute for resolution under Article 7 (a) or (b), the investor may submit the dispute for resolution under Article 7 (c) after six months have elapsed since the events giving rise to the claim. Article 7 (a) or (b), the investor may submit the dispute for resolution under Article 7 (c) after six months have elapsed since the events giving rise to the claim.

(3) Provided that the investor concerned, either on his own or on behalf of the enterprise of the other Contracting Party that he owns or controls, has not submitted the dispute for resolution under Article 7 (c), the investor may submit the dispute for resolution under Article 7 (a) or (b). Article 7 (c), the investor may submit the dispute for resolution under Article 7 (a) or (b).

(4) A disputing investor may submit the claim to arbitration under:

(a) The Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID Convention), provided that both the disputing Contracting Party and the Contracting Party of the investor are parties to the Convention; Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID Convention), provided that both the disputing Contracting Party and the Contracting Party of the investor are parties to the Convention;

(b) The Additional Facility Rules of ICSID, provided that either the disputing Contracting Party or the Contracting Party of the investor, but not both, is a party to the ICSID Convention; or Additional Facility Rules of ICSID, provided that either the disputing Contracting Party or the Contracting Party of the investor, but not both, is a party to the ICSID Convention; or

(c) The Rules of Arbitration of the United Nations Commission on International Trade Law (UNCITRAL Arbitration Rules). Rules of Arbitration of the United Nations Commission on International Trade Law (UNCITRAL Arbitration Rules).

(5) The investor concerned may submit a claim to arbitration only either on his own or on behalf of the enterprise of the other Contracting Party that such an investor owns or controls.

(6) A disputing investor may submit a claim to arbitration only if he consents to arbitration in accordance with the procedures set out in this Agreement and waives his right to initiate before any administrative tribunal or court under the law of a Contracting Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Contracting Party that is alleged to be a breach of this Agreement.

(7) A disputing investor that owns or controls an enterprise of the other Contracting Party may submit a claim to arbitration on his own for a loss or damage to his interest in such an enterprise only if both the investor and the enterprise of the other Contracting Party that the investor owns or controls waive their right to initiate before any administrative tribunal or court under the law of a Contracting Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Contracting Party that is alleged to be a breach of this Agreement.

(8) A disputing investor may submit a claim to arbitration on behalf of an enterprise of the other Contracting Party that the investor owns or controls, only if both the investor and the enterprise consent to arbitration in accordance with the procedures set out in this Agreement and waive their right to initiate before any administrative tribunal or court under the

law of a Contracting Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Contracting Party that is alleged to be a breach under this Agreement .

(9) Notwithstanding the provisions of paragraphs (6), (7), and (8) of this Article, the investor concerned that submits a claim to arbitration may initiate proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Contracting Party. paragraphs (6), (7), and (8) of this Article, the investor concerned that submits a claim to arbitration may initiate proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Contracting Party.

(10) A consent and waiver required by this Article shall be in writing, be delivered to the disputing Contracting Party and be included in the submission of a claim to arbitration.

(11) The applicable arbitration rules shall govern the arbitration except to the extent modified by this Part.

(12) A dispute may be submitted to arbitration provided that the investor has delivered to the Contracting Party, party to the dispute, written notice of his intention to submit a claim to arbitration at least 90 days in advance, but not later than 3 years from the date that either the investor or the enterprise of the other Contracting Party that the investor owns or controls, first acquired or should have acquired knowledge of the events which gave rise to the dispute.

(13) The notice referred to in paragraph (12) shall specify; paragraph (12) shall specify:

(a) The name and address of the disputing investor and, where a claim is made by an investor of a Party on behalf of an enterprise, the name and address of the enterprise;

(b) The provisions of this Agreement alleged to have been breached and any other relevant provisions;

(c) The issues and the factual basis for the claim; and

(d) The relief sought and the approximate amount of damages claimed.

## **Article 9. Contracting Party Consent**

Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with this Part.

## **Article 10. Formation of the Arbitral Tribunal**

(1) Unless the parties to the dispute agree otherwise, the arbitral tribunal shall comprise three members. Each party to the dispute shall appoint one member and the disputing parties shall agree upon a third member as their chairman.

(2) Members of arbitral tribunals shall have experience in international law and investment matters.

(3) If an arbitral tribunal has not been constituted within 90 days from the date the claim was submitted to arbitration, either because a party to the dispute failed to appoint a member or failed to agree upon a chairman, the Secretary General of ICSID, on the request of any of the parties to the dispute, shall be kindly asked to appoint, in his discretion, the member or members not yet appointed. Nevertheless, the Secretary General of ICSID, when appointing a chairman, shall assure that the chairman is a national of neither of the Contracting Parties.

## **Article 11. Consolidation**

(1) A tribunal of consolidation established under this Article shall be installed under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Part. UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Part.

(2) Proceedings will be consolidated in the following cases:

(a) When an investor submits a claim on behalf of an enterprise that he owns or controls and, simultaneously, another investor or other investors participating in the same enterprise, but not controlling it, submit claims on their own behalf as a consequence of the same breaches of this Agreement; or

(b) When two or more claims are submitted to arbitration arising from common legal and factual issues.

(3) The tribunal of consolidation will decide the jurisdiction of the claims and will jointly review such claims, unless it

determines that the interests of any party to the dispute are seriously harmed.

## **Article 12. Place of Arbitration**

Any arbitration under this Part shall, at the request of any party to the dispute, be held in a state that is party of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). Claims submitted to arbitration under this Part shall be considered to arise out of a commercial relationship or transaction for purpose of Article 1 of the New York Convention.

## **Article 13. Indemnification**

A Contracting party shall not assert as a defence, counter-claim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged losses or damages has been received or will be received pursuant to an indemnity, guarantee or insurance contract.

## **Article 14. Applicable Law**

(1) A tribunal established under this Dispute Settlement Mechanism shall decide the submitted issues in dispute in accordance with this Agreement and the applicable rules and principles of international law.

(2) An interpretation jointly formulated and agreed by the Contracting Parties of a provision of this Agreement shall be binding on any tribunal established under this Dispute Settlement Mechanism.

## **Article 15. Awards and Enforcement**

(1) Arbitration awards may provide the following forms of relief:

(a) A declaration that the Contracting Party has failed to comply with its obligations under this Agreement;

(b) Pecuniary compensation;

(c) Restitution in kind in appropriate cases, provided that the Contracting Party may pay pecuniary compensation in lieu thereof where restitution is not practicable; and lieu thereof where restitution is not practicable; and

(d) With the agreement of the parties to the dispute, any other form of relief.

(2) Arbitration awards shall be final and binding only upon the parties to the dispute and only with respect to the particular case.

(3) The final award will only be published if there is written agreement by both parties to the dispute.

(4) An arbitral tribunal shall not order a Contracting Party to pay punitive damages.

(5) Each Contracting Party shall, in its territory, make provision for the effective enforcement of awards made pursuant to this Article and shall carry out without delay any such award issued in a proceeding to which it is party.

(6) An investor may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention, if both Contracting Parties are parties to such instruments. ICSID Convention or the New York Convention, if both Contracting Parties are parties to such instruments.

(7) A disputing party may not seek enforcement of a final award until:

(a) In the case of a final award made under the ICSID Convention:

(i) One hundred and twenty days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or

(ii) Revision or annulment proceedings have been completed; and

(b) In the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules: ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:

(i) Three months have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or

(ii) A court has dismissed an application to revise, set aside or annul the award and there is no further appeal, or

(iii) A court has allowed an application to revise, set aside or annul the award and the proceedings have been completed and there is no further appeal.

(8) If a disputing Contracting Party fails to abide by or comply with a final award, on delivery of a request by a Contracting Party whose investor was a party to the arbitration, an arbitral tribunal under Article 16 may be established. The requesting Contracting Party may seek in such proceedings: Article 16 may be established. The requesting Contracting Party may seek in such proceedings:

(a) A determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement, and

(b) A recommendation that the Contracting Party abide by or comply with the final award.

Part Two

Settlement of Disputes between the Contracting Parties

## **Article 16. Settlement of Disputes between the Contracting Parties**

(1) Disputes between the Contracting Parties concerning the interpretation or application of the Agreement shall, if possible, be settled by consultation through 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. 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. 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 a decision shall be final and 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.

(7) The arbitral tribunal will decide disputes in accordance with this Agreement and the applicable rules and principles of international law. The Arbitral Tribunal shall determine its own procedure.

Chapter III Final Provisions

## **Chapter III. Final Provisions**

### **Article 17. 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 who own 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 18. 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 has arisen before its entry into force.

## **Article 19. Entry Into Force, Duration and Termination**

(1) This Agreement shall enter into force thirty (30) days after the date 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 ten (10) 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 18 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 of the Contracting Parties.

IN WITNESS WHEREOF, the undersigned, have signed this Agreement.

DONE in duplicate at Seoul, Korea, on the \_\_\_\_day of November of two thousand, in the Spanish, 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 UNITED MEXICAN STATES

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

On signing the Agreement between the Government of the United Mexican States and the Government of the Republic of Korea for the Promotion and Reciprocal Protection of Investments, the undersigned have, in addition, agreed on the following provisions which shall be regarded as an integral part of the said Agreement.

Ad. Article 6.

In case of serious balance of payments difficulties or the threat thereof, the United Mexican States may temporarily restrict transfers, provided that the United Mexican States implements measures or a programme in accordance with international standards. These restrictions would be imposed on an equitable, non-discriminatory and in good faith basis.

IN WITNESS WHEREOF, the undersigned, have signed this Agreement.

DONE in duplicate at Seoul, Korea, on the \_\_\_\_day of November of two thousand, in the Spanish, 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 UNITED MEXICAN STATES

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