

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA KOREA AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC IRAN FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

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

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

Intending to utilize their economic resources and potential facilities in the area of investments as well as to create and maintain favourable conditions for investments of the nationals of the Contracting Parties in each other's territory; and

Recognizing the need to promote and protect investments of the nationals of the Contracting Parties in each other's territory;

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of this Agreement, the meaning of the terms used therein are as follows:

1. The term "investment" refers to every kind of property or asset, and in particular, though not exclusively, including the following, invested by the investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the other Contracting Party (hereinafter referred to as the "host Contracting Party"): (a) Movable and immovable property as well as rights related thereto, such as mortgages, liens, leases or pledges;  
(b) Shares or any kind of participation in companies;  
(c) Money and/or receivables;  
(d) Industrial and intellectual property rights such as patent, utility models, industrial designs or models, trade marks and names, know-how and goodwill;  
(e) Rights to search for, extract or exploit natural resources.
2. The term "investors" refers to the following persons who invest in the territory of the other Contracting Party within the framework of this Agreement: (a) Natural persons who, according to the laws of either Contracting Party, are considered to be its national and have not the nationality of the host Contracting Party.  
(b) Legal persons of either Contracting Party which are established under the laws of that Contracting Party and their headquarters or their real economic activities are located in the territory of that Contracting Party.
3. The term "returns" refers to the amounts legally yielded by an investment including profit derived from investments, dividends, royalties and fees.
4. (a) In case of the Republic of Korea, "territory" means the territory of the Republic of Korea, as well as the maritime area, including the seabed and subsoil adjacent to the outer limit of the territorial sea over which the Republic of Korea exercises, in accordance with international law, sovereign rights or jurisdiction for the purpose of exploration and exploitation of the natural resources of such area.  
(b) In case of the Islamic Republic of Iran, the term "territory" refers to areas under the sovereignty or jurisdiction of the Islamic Republic of Iran, as the case may be, and includes its maritime areas.
5. "freely convertible currency" means the currency that is widely used to make payments for international transactions and

widely exchanged in principal international exchange markets.

## **Article 2. Promotion of Investments**

1. Either Contracting Party shall encourage its nationals to invest in the territory of the other Contracting Party.
2. Either Contracting Party shall, within the framework of its laws and regulations, create favourable conditions for attraction of investments of nationals of the other Contracting Party in its territory.

## **Article 3. Admission of Investments**

1. Either Contracting Party shall admit investments of investors of the other Contracting Party in its territory in accordance with its laws and regulations.
2. When an investment is admitted, either Contracting Party shall, in accordance with its laws and regulations, grant all necessary permits for the realization of such an investment.

## **Article 4. Protection of Investments**

1. Investments of investors of either Contracting Party effected within the territory of the other Contracting Party, shall receive from the host Contracting Party full legal protection and fair treatment not less favourable than that accorded to its own investors or to investors of any third State who are in a comparable situation.
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 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. If a Contracting Party has accorded or shall accord in the future special advantages or rights to investor(s) of any third State by virtue of an existing or future agreement establishing a free trade area, a customs union, a common market or a similar regional organization and/or by virtue of an arrangement on the avoidance of double taxation, it shall not be obliged to accord such advantages or rights to investors of the other Contracting Party.

## **Article 5. More Favourable Provisions**

1. Notwithstanding the terms set forth in this Agreement, more favourable provisions which have been or may be agreed upon by either of the Contracting Parties with an investor of the other Contracting Party are applicable.
2. If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such legislation shall, to the extent that it is more favourable, prevail over this Agreement.

## **Article 6. Expropriation and Compensation**

1. Investments of investors of either Contracting Party shall not be nationalized, confiscated, expropriated or subjected to similar measures by the other Contracting Party except such measures which are taken for public purposes, in accordance with due process of law, in a non-discriminatory manner and upon payment of prompt, adequate and effective compensation.
2. Such compensation shall amount to the fair market value of the expropriated investments immediately before expropriation was taken or before impending expropriation became public knowledge. Such compensation shall include extra compensation at the official commercial rate for the delayed payments from the date of expropriation until the date of payment and shall be made without undue delay.

## **Article 7. 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 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.

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.

## **Article 8. Repatriation and Transfer**

1. Each Contracting Party shall ensure that all payments relating to an investment in its territory of an investor of the other Contracting Party may be freely transferred into and out of its territory without delay. Such transfers shall, in particular, though not exclusively, include the following:

(a) Returns;

(b) Proceeds from the sale and/or liquidation of all or part of an investment;

(c) Royalties and fees related to transfer of technology agreement;

(d) Sums paid pursuant to Articles 6 and/or 7 of this Agreement;

(e) Loan installments related to an investment provided that they are paid out of such investment activities;

(f) Monthly salaries and wages received by the employees of an investor who have obtained in the territory of the host Contracting Party, the corresponding work permits related to that investments;

(g) Payments arising from a decision of the authority referred to in Article 12.

2. The above transfers shall be effected in a convertible currency and at the current rate of exchange prevailing on the date of transfer.

3. The investor and the host Contracting Party may agree otherwise on the mechanism of repatriation or transfers referred to in this Article.

## **Article 9. Subrogation**

If a Contracting Party or its designated agency, within the framework of a legal system, subrogates an investor pursuant to a payment made under an insurance or guarantee agreement against non-commercial risks:

(a) Such subrogation shall be recognized by the other Contracting Party;

(b) The subrogee shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise;

(c) Disputes between the subrogee and the host Contracting Party shall be settled in accordance with Article 12 of this Agreement.

## **Article 10. Observance of Commitments**

Either Contracting Party shall guarantee the observance of the commitments it has entered into through this Agreement with respect to investments of investors of the other Contracting Party.

## **Article 11. Scope of the Agreement**

1. This Agreement shall apply to investments approved by the competent authorities of the host Contracting Party. The competent authority in the Islamic Republic of Iran is Organization for Investment, Economic and Technical Assistance of Iran(O.I.E.T.A.I.).

2. This Agreement shall also apply to the investments which have been made in accordance with the provisions set forth in this Article before entry into force of this Agreement.

## **Article 12. Settlement of Disputes between a Contracting Party and Investor(s) of the other Contracting Party**

1. Any legal dispute arising directly out of an investment between an investor of one Contracting Party and the other Contracting Party shall be settled amicably between the two parties concerned.

2. If this dispute has not been settled within a period of six (6) months from the date at which it was notified in writing by one party to the other, it shall be submitted, at the request and choice of investors for settlement to;

(a) The competent court of the Contracting Party in the territory of which the investment has been made; or

(b) An ad hoc arbitral tribunal; or

(c) The International Center for Settlement of Investment Disputes established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, if both Contracting Parties are signatories to the Convention.

3. A dispute primarily referred to the competent courts of the host Contracting Party, as long as it is pending, cannot be referred to arbitration without the parties agreement; and in the event that a final judgement is rendered, it cannot be referred to arbitration.

4. National courts shall not have jurisdiction over any dispute referred to arbitration. However, the provisions of this paragraph do not bar the winning party to seek for the enforcement of the arbitral award before national courts.

5. The ad hoc arbitral tribunal specified under paragraph(2/b) of this Article shall be established as follows:

(a) Each party to the dispute shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint by mutual agreement a third arbitrator, who must be a citizen of the third country, and who shall be designated as Chairman of the Tribunal by the two parties. All the arbitrators must be appointed within two (2) months from the date of notification by one party to the other party of its intention to submit the dispute to arbitration.

(b) If the periods specified in sub-paragraph (a) above have not been respected, either party, in the absence of any other agreement, shall invite the Secretary General of the Permanent Court of Arbitration at the Hague to make the necessary appointments.

(c) The tribunal shall reach its decisions by a majority of votes. These decisions shall be final and legally binding upon the parties and shall be enforced in accordance with the domestic law. They shall be taken in conformity with the provisions of this Agreement, the laws of the Contracting Party to the dispute and the principles of international law.

(d) Arbitration shall be conducted according to the Arbitration Rules of the United Nation's Commission on International Trade Law (UNCITRAL).

6. The award made by arbitration 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.

7. Both Contracting Parties give their unconditional consent to submit a dispute, with due regard to their laws and regulations, to international Arbitration.

## **Article 13. Settlement of Disputes between the Contracting Parties**

1. All disputes arising between the Contracting Parties relating to the interpretation or application of this Agreement shall, in the first place, be settled amicably by consultation. In case of disagreement, either Contracting Party may, subject to its laws and regulations, while sending a notice to the other Party, refer the case to an arbitral tribunal of three members consisting of two arbitrators appointed by the Contracting Parties and one umpire.

In case the dispute is referred to the arbitral tribunal, either Contracting Party shall appoint an arbitrator within sixty (60) days from the receipt of the notification. The arbitrators appointed by the Contracting Parties shall appoint the umpire within sixty (60) days from the date of the last appointment. If either Contracting Party does not appoint its own arbitrator or the appointed arbitrators do not agree on the appointment of the umpire within the said periods, each Contracting Party may request the President of the International Court of Justice to appoint the arbitrator of the failing party or the umpire, as the case may be.

However, the umpire shall be a national of a third State having diplomatic relations with both Contracting Parties at the time of the appointment.

2. In case the umpire is to be appointed by the President of the International Court of Justice, if the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the vice-president of the International Court of Justice, and if the vice-president is also prevented from carrying out the said function or he is a national of either Contracting Party, the appointment shall be made by the senior member of the said court who is not a national of either Contracting Party.

3. Subject to other provisions agreed by the Contracting Parties, the arbitral tribunal shall determine its procedure and the place of arbitration.

4. The decisions of the arbitral tribunal shall be binding on the Contracting Parties.

## **Article 14. Validity of the Agreement**

1. The Contracting Parties shall fulfill their respective constitutional requirements for entry into force of this Agreement.

2. This Agreement shall enter into force for a period of twenty (20) years after thirty (30) days from the date of the last notification of either Contracting Party to the other Contracting Party that it has fulfilled necessary measures in accordance with its laws and regulations for entry into force of this Agreement. After the said period, this Agreement shall remain in force thereafter unless one of the Contracting Parties notifies the other Contracting Party in writing of its unwillingness to continue with this Agreement, six months prior to expiration or termination thereof.

3. After the expiration of the validity or termination of this Agreement, its provisions shall apply to investments under this Agreement for a further period of ten (10) years.

4. This Agreement may be amended through negotiation between the Contracting Parties. The Contracting Parties shall fulfill their respective constitutional requirements for entry into force of any such amendments. Such amendments shall come into force by exchange of Notes between them.

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

DONE in duplicate at Teheran on the 31st day of October 1998, corresponding to 9th day of Aban 1377, in the Korean, Persian 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 THE ISLAMIC REPUBLIC OF IRAN