

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA ON THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

Signed at Seoul September 24, 1993

Entered into force November 9, 1993

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

Desiring to develop economic cooperation between the two States,

Intending to encourage and create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit,

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

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investments" shall mean every kind of asset, and in particular, though not exclusively, includes:

- (a) Movable and immovable property and any other property rights such as mortgages, liens and pledges;
- (b) Shares, stocks and debentures of companies or interests in the property of such companies;
- (c) Claims to money or to any performance under contract having an economic value;
- (d) Industrial and intellectual property rights, including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, trade secrets, technical processes, know-how and goodwill;
- (e) Business concessions of economic value necessary for conducting economic activities, conferred by law or under contract, including concessions to search for, cultivate, extract and exploit natural resources,

Any alteration of the form in which assets are invested shall not affect their classification as investment. (2) The term "returns" shall mean the amount yielded by an investment, and in particular, though not exclusively, shall include profits, interests, dividends, royalties, fees or other current incomes;

(3) The term "investor" shall mean, with respect to either Contracting Party:

- (a) Natural persons having the nationality of that Contracting Party in accordance with its laws,
- (b) Any companies, firms, organizations and associations incorporated or constituted in accordance with the laws of that Contracting Party;

(4) The term "territory" shall mean the territory of the Republic of Korea and the territory of the Republic of Lithuania respectively, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea of either of the above territories, over which the State concerned exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas.

(5) The term "freely convertible currency" shall mean the currency that is widely used to make payments for international transactions and widely traded for in the international principal exchange markets.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall promote and encourage 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 shall admit such investments in accordance with its legislation.

(2) Investment 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 made by investors of one Contracting Party in the territory of the other Contracting Party, as also the returns therefrom, shall be accorded treatment which is fair and equitable and not less favourable than that accorded to 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. Compensation for Losses

Investors of one Contracting Party, whose investments in the territory of the other Contracting Party suffered losses owing to war or armed conflict, state emergency or other similar events shall be accorded treatment, as regards compensation or other forms of settlement, not less favourable than that accorded by the latter Contracting Party to its own investors or to the investors of any third State. Any payment made under this Article shall be freely transferable.

Article 5. Expropriation

(1) Investments made by investors of one Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation 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 on a non-discriminatory basis in accordance with legal procedures and against compensation.

(2) 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 without undue delay.

(3) 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 this paragraph.

(4) 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, the provisions of paragraph (1) of this Article shall be applied.

Article 6. Repatriation of Investment

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party, without undue delay, the unrestricted transfer in convertible currency of proceeds connected with the investment, subject to the right of that Contracting Party to exercise equitably and in good faith powers conferred by its laws and consistent with its rights and obligations as a member of the International Monetary Fund.

(2) For the purpose of this Agreement, exchange rates shall be the rates effective for the current transactions or those which are determined in accordance with the official rate of exchange in force at the date of transfer.

Article 7. Exceptions

The provisions of the Article 3 of this Agreement relative to the granting of treatment not less favourable than that accorded to the investors of either Contracting Party or of any third State 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 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;

(b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 8. Subrogation

(1) 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 or any part thereof in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) The assignment, whether under law or pursuant to a legal transaction in that country, of any right or claim from the investor to the former Contracting Party or its designated agency, and

(b) That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claim of such an investor.

(2) The former Contracting party or its designated agency shall, accordingly, be entitled to assert, if it so desires, any such right or claim to the same extent as its predecessor in title.

(3) The other 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 in pursuance of which that Contracting Party will be entitled to in the same extent as its legal predecessor.

Article 9. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) Any dispute between either Contracting Party and the 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 are 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 any dispute cannot be settled within six(6) months from the date either Party requested amicable settlement, it shall, upon request of either the investor or the Contracting Party, be submitted to the International Centre for the Settlement of Investment Disputes established by the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States. 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 10. Settlement of Disputes between the Contracting Parties

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

(2) If a dispute between the Contracting Parties cannot be settled within six(6) months after the beginning of negotiations, 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 national 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 national of either Contracting Party or 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 national 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 national 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 11. Application of the Agreement

This Agreement shall apply to all investments, made in the territory of one Contracting Party by investors of the other Contracting Party after the entry into force of this Agreement.

Article 12. Entry Into Force, Duration and Termination

(1) This Agreement shall enter into force on 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 five years and continue in force thereafter unless either Contracting Party notifies in writing six months in advance of its intention to terminate this Agreement.

(3) With respect to investments made prior to the receipt of the notification of expiry, the provisions of Article 1 to 11 shall remain in force for a further period of ten years from the date of the receipt of the notification.

(4) This Agreement may be revised by mutual consent. Any revision or termination of this Agreement shall be effected without prejudice to any rights or obligations accruing or incurred under this Agreement prior to the effective date of such revision or termination.

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

DONE in duplicate at Seoul this 24th day of September, 1993 in the Korean, Lithuanian 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

Hong Soon-young

FOR THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA

Kazimietas Klimasauskas