

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE HUNGARIAN PEOPLE'S REPUBLIC FOR THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Korea and the Government of the Hungarian People's Republic (hereinafter referred to as "the Contracting Parties"),

DESIRING to intensify economic cooperation to the mutual benefit of both countries,

INTENDING to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

And

RECOGNIZING that the encouragement and protection of investments on the basis of the present Agreement stimulates the individual business initiative in this field,

HAVE AGREED AS FOLLOWS:

Article 1.

For the purposes of the present Agreement:

1. The term "investments" shall comprise every kind of asset connected with economic activities and invested by investors of one Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the latter Contracting Party, and shall include, in particular, though not exclusively:

- a) Movable and immovable property as well as any other rights in rem in respect of every kind of asset;
- b) Rights derived from shares, bonds or other kinds of interests in companies;
- c) Title to money, goodwill and other assets and to any performance having an economic value;
- d) Rights in the field of intellectual property such as copyrights, patents, trademarks, industrial designs, technical processes and know-how;
- e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

2. The term "investor" shall comprise with regard to either Contracting Party:

- a) Natural persons having the nationality of that Contracting Party in accordance with its law;
- b) Legal persons incorporated or constituted in accordance with the law of that Contracting Party.

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

4. The term "freely convertible currency" means the currency that is widely used to make payments for international transactions and widely traded in the international principal exchange markets.

Article 2.

1. Each Contracting Party shall in its territory promote investments by investors of the other Contracting Party and admit such investments in accordance with its provisions of law.

2. The present Agreement shall apply to investments made by investors of either Contracting Party in conformity with the provisions of law of the other Contracting Party in its territory.

Article 3.

1. Each Contracting Party shall ensure fair and equitable treatment to the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors.

2. More particularly, each Contracting Party shall accord to such investments and returns full security and protection which in any case shall not be less than that accorded to investments and returns of its own investors or investors of any third State.

3. If a Contracting Party has accorded special advantages to investors of any third State by virtue of agreements establishing customs unions, economic unions, free trade area or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to investors of the other Contracting Party.

4. The treatment granted under this Article shall not extend to taxes, fees, charges and to fiscal deductions and exemptions granted by either Contracting Party to investor of third States by virtue of a double taxation agreement or other agreements regarding matters of taxation, or on the basis of reciprocity with a third State.

Article 4.

1. Neither Contracting Party shall take any measures depriving, directly or indirectly, investors of the other Contracting Party of their investments unless the following conditions are complied with:

- a) The measures are taken in the public interest and under due process of law;
- b) The measures are not discriminatory or contrary to any undertaking which the former Contracting Party may have given;
- c) The measures are accompanied by provision for the payment of just compensation. Such compensation shall amount to the market value of the investment affected and shall include interest until the date of payment. Such compensation shall be paid and made transferable without undue delay.

2. Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, state of emergency, revolt or riot, shall be accorded treatment no less favourable by such other Contracting Party than that Party accords to its own investors or investors of any third State as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable between the two Contracting Parties.

Article 5.

The Contracting Parties shall guarantee the transfer of payments related to investments and returns. The transfers shall be made in a freely convertible currency, without undue restriction and delay.

Such transfers shall include in particular, though not exclusively:

- a) Capital and additional amounts to maintain or increase the investment;
- b) Profits, interest, dividends and other current income;
- c) Funds in repayment of loans;
- d) Royalties or fees;
- e) Proceeds of sale or liquidation of the investment;
- f) The earnings of natural persons subject to the laws and regulations of that Contracting Party where investments have been made.

Article 6.

If a Contracting Party makes a payment to any of its own investors under a guarantee it has granted in respect to an investment, the other Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 9, recognize the transfer of any right or title of such investors to the former Contracting Party and the subrogation of the former Contracting Party to any right or title.

Article 7.

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall to the extent that it is more favourable prevail over the present Agreement.

Article 8.

Either Contracting Party may propose the other Contracting Party to consult on any matter affecting the operation of the present Agreement. The other Contracting Party shall accord sympathetic consideration to and shall afford adequate opportunity for such consultation.

Article 9.

1. Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement shall as far as possible be settled by the Governments of the two Contracting Parties.
 2. If the dispute cannot thus be settled within six months from the beginning of the negotiations, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.
 3. The arbitral tribunal shall be constituted in the following way. Each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as chairman. The arbitrators shall be appointed within three months, the chairman within five months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.
 4. If one of the Contracting Parties fails to appoint its arbitrator and has not proceeded to do so within the specified period, the other Contracting Party may invite the President of the International Court of Justice to make the necessary appointment. If the two arbitrators are unable to reach an agreement, in the specified period, on the choice of the third arbitrator, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointment.
 5. If, in the cases provided for in the fourth paragraph of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments.
- If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party the most senior member of the Court available who is not a national of either Contracting Party shall be invited to make the necessary appointments.
6. The arbitral tribunal shall decide on the basis of respect for the law, including particularly the present Agreement and other relevant agreements existing between the two Contracting Parties and the universally acknowledged rules and principles of international law.
 7. Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.
 8. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Contracting Parties.
 9. Each Contracting Party shall bear the cost of the arbitrator appointed by itself and of its representation. The cost of the chairman as well as the other costs will be borne in equal parts by the Contracting Parties.

Article 10.

1. Any dispute between either Contracting Party and the investor of the other Contracting Party including expropriation or nationalization 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 a 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 concerning expropriation or nationalization can not be settled within six 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 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.
4. If a dispute not referred to in paragraph 3 of this Article can not be settled within six months from the date either party requested amicable settlement, it shall be submitted, upon agreement on such submission by both parties to the dispute, to the International Center for Settlement of Investment Disputes for conciliation or arbitration under the Washington Convention.

Article 11.

1. The present Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have informed each other in writing that the procedures constitutionally required therefore in their respective countries have been complied with, and shall remain in force for a period of 15 years.
2. The present Agreement shall be extended tacitly for periods of 10 years, unless terminated in accordance with paragraph 3 of this Article.
3. Either Contracting Party may, by giving at least six months' prior written notice, terminate the present Agreement at the end of the initial 15 year period or any time thereafter.
4. In respect of investments made before the date of the termination of the present Agreement the foregoing Articles thereof shall continue to be effective for a further period of 10 years from that date.

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

DONE in duplicate at Budapest on this 28 day of December 1988 in the Hungarian, 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 Hungarian People's Republic

For the Government of the Republic of Korea