Agreement between the Government of the Kingdom of Thailand and the Government of the Democratic People's Republic of Korea for the Promotion and Protection of Investments

The Government of the the Kingdom of Thailand and the Government of the Democratic People's Republic of Korea, hereinafter referred to as the "Contracting Parties",

Desiring to create favourable conditions for greater economic cooperation between both States and, in particular, for the investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion of such investments and the reciprocal protection of investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States:

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement

(1) The term "investment" 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 a company and any other similar forms of participation in a company;

(c) Claims to money and any other rights to performance under contract having an economic value;

(d) Intellectual property and industrial property rights as recognized by the law of the Contracting Party in whose territory the investment is made, know-how and goodwill;

(e) Business concession conferred by law or under contract including concessions to search for, cultivate, extract, or exploit natural resources.

Subject to the provision of Article 2 paragraph 1, any alteration of the form in which assets are invested or are reinvested shall not affect their character as an investment, provided that such alteration or reinvestment does not contradict to the laws and regulations of the Contracting Party in whose territory the investments were made.

(2) The term "investor" shall mean with regard to either Contracting Party.

(a) Natural persons who, according to the law of that Contracting Party, are considered to be its nationals;

(b) Legal entities, including companies, corporations, business associations and other organizations, which are constituted or otherwise duly organized under the law of that Contracting Party and have their seat, together with real economic activities, in the territory of that same Contracting Party;

(c) Legal entities established under the law of any country which are, directly or indirectly, controlled by nationals of that Contracting Party or by legal entities having their seat, together with real economic activities, in the territory of that Contracting Party.

(3) The term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties, or fees.

(4) The term "territory" shall mean with respect to each Contracting Party, the territory of that Contracting Party including the continental shelf and the exclusive economic zone over which that Contracting Party exercises sovereign rights or jurisdiction in conformity with international law.

(5) The term "expropriation" shall also include acts of sovereign power which are tantamount to expropriation, as well as measures of nationalization.

(6) The term "freely usable currencies" shall mean currencies that the International Monetary Fund determines, from time to time, as freely usable currencies in accordance with the Articles of Agreement of the International Monetary Fund and Amendments thereafter.

Article 2. Scope of Application

(1) The benefits of this Agreement shall apply only in cases where the investment by investor of one Contracting Party in the territory of the other Contracting Party has been specifically approved in writing by the competent authority of the latter Contracting Party.

(2) Investors of either Contracting Party shall be free to apply for such approval in respect of any investment whether made before or after the entry into force of this Agreement.

(3) The competent authorities of the Contracting Parties shall be as follows:

(a) In the case of the Kingdom of Thailand: Ministry of Foreign Affairs

(b) In the case of the Democratic People's Republic of Korea: Ministry of Foreign Trade

Article 3. Promotion and Protection of Investments

(1) Each Contracting Party shall encourage and create favourable conditions in its territory for investments of the investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

(2) Investments of investors of either Contracting Party shall at all time 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 anyway impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

(3) Each Contracting Party shall observe any obligation, additional to those specified in this Agreement, into which it may have entered with regard to investments of investors of the other Contracting Party.

(4) The Contracting Parties shall within the framework of their national legislation give sympathetic consideration to applications for the entry and sojourn of nationals of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment: the same shall apply to employed persons of either Contracting Party who in connection with an investment wish to enter the territory of the other Contracting Party and sojourn there to take up employment. Applications for permit shall also be given sympathetic consideration.

Article 4. Treatment of Investments

(1) Each Contracting Party shall in its territory accord investments and returns of investors of the other Contracting Party treatment which is fair and equitable and not 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.

(2) Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investments, treatment which it fair and equitable and not less favourable than that which it accords to its own investors or investors of any third State, whichever is more favourable.

(3) The provisions of paragraph (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 the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

(a) Any customs union or free trade area or a monetary union or similar international agreements leading to such unions or other forms of regional cooperation to which either of the Contracting Party is or may become a party;

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

Article 5. Compensation for Losses

(1) Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot or other such similar activity in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to investors of any third State. Resulting payments shall be freely transferable in a freely usable currency.

(2) Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who, in any of the situation referred to in that paragraph, suffer losses in the territory of the other Contracting Party, resulting from requisitioning or 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 prompt, adequate, and effective compensation. Resulting payments shall be freely transferable in a freely usable currency.

Article 6. Expropriation

(1) Investments of investors of either Contracting Party shall not be expropriated, nationalized 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 public purposes, under due process of law, on a nondiscriminatory basis and against prompt, adequate and effective compensation.

(2) The compensation shall amount to the fair value of the investments expropriated immediately before the date of expropriation or before the impending expropriation becomes public knowledge, whichever is the earlier, and shall be paid without delay and shall carry interest at the rate applicable in the territory of that Contracting Party from the date when the payment is due until the date of actual payment. The payment of such compensation shall be freely transferable in a freely usable currency.

(3) The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to review, by a judicial or other independent authority of that Contracting Party, his or its case and the valuation of his or its investment in accordance with the principles set out in paragraphs (1) and (2). The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.

Article 7. Transfers of Investments and Returns

(1) Each Contracting Party shall guarantee to the investors of the other Contracting Party, after the fulfillment of the fiscal obligations of the investors, the free transfer, in freely usable currency, of:

(a) Capital and additional amounts intended to maintain or increase the investment;

(b) Returns from the investment;

(c) Proceeds obtained from the sale and the total or partial liquidation of the investment;

(d) Funds in repayment of loans relating to investments;

(e) Compensation payable in accordance with Articles 5 and 6;

(f) The remuneration received by the nationals of the other Contracting Party for work or services done in connection with investments made in its territory, in accordance with its laws and regulations.

(2) The transfers referred to in the preceding paragraph shall be made without delay, at the market exchange rate prevailing on the date of the transfer in the territory of the other Contracting Party where the investment was made.

(3) All transfers under this Article shall receive treatment no less favourable than that accorded to the transfers of an investment made by an investor of any third State.

Article 8. Subrogation

(1) If either Contracting Party or an agency designated by it has granted any financial guarantee against non-commercial risks in respect of any investment by its investor or any part thereof 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, of any right or claim from such 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 right 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) If the former Contracting Party acquires amounts in the lawful currency of the other Contracting Party or credits thereof by virtue of an assignment under subparagraph (a) of paragraph (1) of this Article, such amounts and credits shall be freely available to the former Contracting Party for the purpose of meeting its expenditure in the territory of the latter Contracting Party.

Article 9. Consultations and Exchange of Information

Either Contracting Party may request consultations on the interpretation or application of this Agreement. The other Contracting Party shall give sympathetic consideration of the request. Upon request by either Contracting Party, information shall be exchanged on the foreign investment policies, laws and regulations of the other Contracting Party that may have an impact on new investments, investments or returns covered by this Agreement.

Article 10. Application of other Rules

(1) If the provisions of the 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 rules whether general or specific, entitling investments and returns of investors of the other Contracting Party to treatment more favourable than that provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

(2) Each Contracting Party shall observe any other obligation it may have entered into with regard to investments of investors of the other Contracting Party.

Article 11. Settlement of Investment Disputes

(1) In case of dispute with respect to investments between a Contracting Party and an investor of the other Contracting Party, consultations shall take place between the parties concerned with a view to solving the case amicably.

(2) If these consultations do not result in a solution within three months from the date of request for settlement, the investor may submit the dispute, at his choice, for settlement to:

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

(b) The International Centre for Settlement of Investment Disputes in case both Contracting Parties are Contracting States to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington, D.C. on March 18, 1965; or

(c) An arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(3) The arbitral tribunal established under this Article shall reach its decision on the basis of national laws and regulations of the Contracting Party, which is a party to the dispute, the provisions of the present Agreement, as well as applicable rules of international law.

(4) All arbitral awards shall be final and binding on the parties to the dispute and shall be enforced in accordance with the laws of the Contracting Party to the dispute.

(5) All sums received or payable as a result of a settlement shall be freely transferable in a freely usable currency.

Article 12. Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, whenever possible, be settled amicably through consultations.

(2) If a dispute cannot be settled through consultations within 6 months, it shall, at the request of either Contracting Party, be submitted to an arbitral tribunal for decision.

(3) An arbitral tribunal shall be constituted for each dispute. Within two months after receipt through diplomatic channels of the request for arbitration, each Contracting Party shall appoint one member to the arbitral tribunal. The two members shall then select a national of a third State that has diplomatic relations with both Contracting Parties who, upon approval by the two Contracting Parties, shall be appointed Chairman of the arbitral tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members of the arbitral tribunal.

(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 any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or is otherwise 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 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 determine its own procedure. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Unless otherwise agreed, the decision of the arbitral tribunal shall be rendered within six months of the appointment of the Chairman in accordance with paragraphs (3) or (4) of this Article.

(6) Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitral proceeding; the costs related to the Chairman and any remaining costs shall be borne equally by the Contracting Parties. The arbitral 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.

Article 13. Amendment

This Agreement may be amended at any time, if deemed necessary, by mutual consent of both Contracting Parties in writing.

Article 14. Entry Into Force, Duration and Termination

(1) Each Contracting Party shall notify the other in writing of the completion of the procedures required in its territory for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications for an initial period of ten years.

(2) Thereafter, this Agreement shall remain in force indefinitely unless either Contracting Party notifies the other Contracting Party in writing of its intention to terminate it. The termination of this Agreement shall become effective one year after notice of termination has been received by the other Contracting Party. In respect of investments made prior to the date when the termination of this Agreement becomes effective, the provisions of this Agreement shall remain in force for a period of fifteen years.

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

DONE in duplicate at Bangkok, on this 1st day of March 2002, in the Thai, Korean, and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the Kingdom of Thailand

Dr. Surakiart Sathirathai

Minister of Foreign Affairs

For the Government of the Democratic People's Republic of Korea

Mr. Ri Kwang Gun

Minister of Foreign Trade