

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE UNITED ARAB EMIRATES FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

Signed at Abu Dhabi 9 June, 2002

Entered into force June 5, 2004

The Government of the Republic of Korea and the Government of the United Arab Emirates (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:

Article 1. Definitions

For the purposes of this Agreement:

1. "investments" means every kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter Contracting Party and in particular, though not exclusively, includes:

(a) Movable and immovable property and any other property rights such as mortgages, liens, leases or pledges;

(b) Shares, stocks, debentures, liquid assets, and any other form of participation in a company or any business enterprise including those which are engaged in petroleum-related activities such as storage, manufacturing of petroleum chemicals, and marketing;

(c) Claims to money related to investment or to any performance under a contract related to projects

(d) Business concessions having an economic value conferred by law or under a contract, including concessions to search for, cultivate, extract or exploit natural resources;

(e) Intellectual property rights including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, technical processes, trade secrets and know-how, and goodwill.

Any change of the form in which assets are invested or reinvested shall not affect their character as an investment.

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

3. "investors" means any natural or juridical persons of one Contracting Party, governmental or private, who invest in the territory of the other Contracting Party:

(a) The term "natural persons" means natural persons having the nationality of one Contracting Party in accordance with its laws; and

(b) The term "juridical persons" means any entity such as companies, public institutions, authorities, foundations, partnerships, firms, establishments, organizations, corporations or associations, incorporated or constituted in accordance

with the laws and regulations of one Contracting Party.

4. "territory" means the territory of the Republic of Korea or the territory of the United Arab Emirates respectively, 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 and with their respective legislation, sovereign rights or jurisdiction for the purpose of exploration and exploitation of the natural resources of such 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.

6. "ICSID Convention" means the Convention on the Settlement of Investment Disputes between States and National of the other States signed at Washington, March 18, 1965.

Article 2. Promotion and Protection of the Investment

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 unreasonable or discriminatory measures the operation, management, maintenance, use, enjoyments or disposal of investments in its territory by investors of the other Contracting Party.

3. Investors of each Contracting Party may apply to the competent authorities in the other Contracting Party for the appropriate facilities, incentives and other forms of encouragement and the latter Contracting Party may grant them all assistance, consents, approvals, licenses and conditions as may be determined by its laws and regulations.

4. Each Contracting Party shall accord to investors of the other Contracting Party, in accordance with its laws related to the promotion of foreign investments, all incentives thereof.

5. Investors of each Contracting Party shall be permitted to engage top managerial personnel of their choice regardless of nationality to the extent permitted by the laws and regulations of the other Contracting Party. The Contracting Parties shall give due consideration to the issuance of visas and permits of stay to such managerial personnel, their families, and other supporting personnel in accordance with its laws and regulations.

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 operation, management, maintenance, use, and enjoyment of 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. The provisions of paragraphs (1) and (2) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment or preference of privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation.

4. Such treatment shall not relate to privileges which either Contracting Party accords to investors of third States on account of its present or future membership of, or association with a customs or economic union, a common market or a free trade area or similar international agreements.

Article 4. Compensation for 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 events 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. Resulting payments shall be freely transferable without undue delay.

2. Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who, in any of the events 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 no less favourable than that which would be accorded under the same circumstances to investors of that other Contracting Party or to an investor of any other State. Resulting payments shall be freely transferable without undue delay.

Article 5. Expropriation

1. Investments of investors of one Contracting Party shall not be nationalized, expropriated or otherwise subject to any other measures such as sequestration or confiscation 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 prompt, adequate and effective compensation. The expropriation shall be carried out on a non-discriminatory basis in accordance with legal procedures. Without prejudice to provisions of this paragraph, when a decision is made to expropriate the claims to money whose amount is being disputed in the legal procedure, that amount may be deemed not to have been expropriated until the final settlement is made.
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, 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 and be freely convertible and transferable. Where the fair market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account, inter alia, depreciation of the capital invested, capital already repatriated, replacement value, goodwill and other relevant factors.
3. Investors of one Contracting Party affected by expropriation shall have a right to prompt review by a judicial or other independent authority of the other Contracting Party, of their case and of the valuation of their investments in accordance with the principles set out in this Article.
4. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under its laws and regulations, and in which investors of the other Contracting Party own shares, debentures or other forms of participation, the provisions of this Article shall be applied.

Article 6. Transfers

1. Each Contracting party shall guarantee to investors of the other Contracting Party 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 the other Contracting Party who are allowed to work in connection with investments in its territory;
 - (e) Additional funds necessary for the maintenance or development of the existing investments; and
 - (f) Compensation pursuant to Articles 4 and 5.
2. All transfers under this Agreement shall be made in a freely convertible currency, without delay or restriction, at the market exchange rate, prevailing at the date of the transfer.

Article 7. Subrogation

If a Contracting Party or its authorized agency makes a payment to its own investors under an indemnity given in respect of investments 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 in that State, of any rights or claims from

investors to the former Contracting Party or its authorized agency; and

(b) That the former Contracting Party or its authorized agency is entitled by virtue of subrogation to exercise the rights of and enforce the claims of those investors.

(c) Questions regarding subrogation shall be consulted in the Joint Committee set by Article 8 of this Agreement.

Article 8. Consultation

The Contracting Parties shall establish a Joint Committee where both Contracting Parties or their designated agencies will consult matters in connection with this Agreement in order to effectively implement this Agreement and to prevent disputes related to investments.

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

1. Any dispute between a Contracting Party and an investor of the other Contracting Party including expropriation or nationalization of investments shall, as far as possible, be settled by the parties of the dispute in an amicable way.

2. The local remedies under the laws and regulations of one Contracting Party in the territory of which the investment has been made shall be available for investors 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 investors.

3. If the dispute cannot be settled within six (6) months from the date on which the dispute has been raised by either party, the disputing Contracting Party shall agree to submit the dispute to the International Center for Settlement of Investment Disputes (hereinafter referred to as ICSID) established by the ICSID Convention.

4. Upon the consent of both parties to the dispute, the disputes shall be submitted to ICSID.

5. The award made by ICSID 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.

Article 10. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled by consultation through diplomatic channels.

2. If such disputes are not settled within six (6) months, it shall, on the request of either Contracting Party, be submitted to an ad hoc Arbitral Tribunal in accordance with the provision 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 written request of either party 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 appointment. 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 decision shall be 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. The Tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties.

7. The Arbitral Tribunal shall determine its own procedure.

Article 11. 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, 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 more favourable to the cases of investors.

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 or other specific provisions or contracts is more favourable than that accorded by this Agreement, the more favourable treatment shall be accorded.

Article 12. Application of the Agreement

This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning investments that has arisen before the entry into force of this Agreement.

Article 13. 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 12 of this Agreement shall remain in force for a further period of ten (10) years from the date of termination.

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

DONE in duplicate at Abu Dhabi on this ninth day of June, 2002, in the Korean, Arabic 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 UNITED ARAB EMIRATES

At the signing of the Agreement between the Government of the Republic of Korea and the Government of the United Arab Emirates for the Promotion and Protection of Investments, the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement:

1. With respect to Article 1:

It is understood that "business concessions having an economic value conferred by law or under a contract", means any rights conferred by law for, inter alia, management, marketing, loan, production, permission, and authorization that include concessions to search for, cultivate, extract or exploit natural resources according to the laws and regulations of the Contracting Party in whose territory the investment is made.

2. With respect to Article 2:

(a) The companies established or to be established jointly by investors of one Contracting Party and investors of the other Contracting Party shall have the right to exercise the general powers granted under the laws of the Contracting Party in whose territory the companies are established for the attainment of their general purposes and objectives.

(b) Those companies shall also have the right, in accordance with the laws of the Contracting Party in whose territory the companies are established, to issue and execute any decision which the companies deem necessary to achieve their objectives. In particular, they shall not be subject to undue and discriminatory hindrance to the establishment of subsidiary companies or to their participation in other companies for industrial, manufacturing, agricultural, touristic and high-

technology projects.

3. With respect to Building Construction:

With regard to construction projects, the terms and conditions of the contract shall be respected regarding matters which are not provided in this Agreement.

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

Done in duplicate at Abu Dhabi this ninth day of June, 2002, in the Korean, Arabic and English languages, all the 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 UNITED ARAB EMIRATES