

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE REPUBLIC OF GUATEMALA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

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

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

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

RECOGNIZING that the promotion and protection of investments on the basis of this Agreement will stimulate business initiative in this field,

HAVE AGREED as follows:

Article 1. Definitions

For the purpose of this Agreement, the following concepts are defined:

(1) "Investments" means every kind of asset or rights 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 related rights;

(b) Shares in, stocks and debentures of, and any other form of participation in a company or any business enterprise and rights or interests derived therefrom;

(c) Claims to money or to any performance having an economic value;

(d) Intellectual property rights;

(e) Any right conferred by law or under contract and any licences and permits pursuant to law, including the right to search for, cultivate, extract or exploit natural resources;

Any change in the form of an investment shall not affect its character as an investment.

(2) "Investor" means any natural or juridical person who invests in the territory of the other Contracting Party:

(a) The term "natural person" means with respect to either Contracting Party a natural person or individual having the nationality or citizenship of that Contracting Party in accordance with its laws,

(b) The term "juridical person" means with respect to either Contracting Party, any entity incorporated or constituted in accordance with laws, such as public institutions, corporations, authorities, foundations, companies, partnerships, firms, establishments, organizations and associations irrespective of whether their liabilities are limited or otherwise; and whether or not for pecuniary profit.

(3) "Returns" means the amounts yielded by an investment and, in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties, license fees or other fees.

(4) "Territory" means the territory of the Republic of Korea or the territory of the Republic of Guatemala respectively, as well as the land, sea and airspace under the sovereignty of each of the Contracting Parties, including the marine and submarine zones in which they exercise their sovereign rights and jurisdiction, in accordance with their respective legislations and with

international law.

(5) "Freely convertible currency" means the currency that is widely used to make payments for international transactions and widely traded in international main financial markets.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall encourage and create favorable 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 of investors of either 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.

(3) Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the operation, management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.

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 which is fair and equitable and no less favorable 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 favorable to investors.

(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 favorable than that which it accords to its own investors or to investors of any third State, whichever is more favorable to investors.

(3) If one of the Contracting Parties grants special advantages to the investors of any third State by virtue of an agreement relative to the establishment of a free trade zone, a customs union, a common market, an economic organization or by virtue of a double taxation agreement, such Contracting Party shall not be obliged to grant those advantages to the investors of the other Contracting Party.

Article 4. Compensation for Losses

When investments by investors of either Contracting Party suffer losses owing to war, armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favorable 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.

Article 5. Expropriation

(1) Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose or public necessity. The expropriation shall be carried out on a non-discriminatory basis and shall be accompanied by the provision for the payments of prompt, adequate, and effective compensation, in accordance with legal procedures.

(2) Such compensation shall amount to the fair market value of the investment expropriated immediately before expropriation 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 delay, be effectively realizable and be freely transferable.

(3) The 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) The Contracting Parties shall guarantee the free 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) The net profits, dividends, royalties, technical assistance and technical service fees, interest and other current income, accruing from any investment by an investor of the other Contracting Party;
- (b) The proceeds accruing from the sale or the total or partial liquidation of any investment made by an investor of the other Contracting Party;
- (c) Funds in repayment of borrowings;
- (d) The earnings of nationals of the other Contracting Party who are allowed to work in connection with an investment in its territory;
- (e) Amounts spent for the management of the investment in the territory of the other Contracting Party or a third State;
- (f) Additional funds necessary for the maintenance of the investment; and
- (g) Compensation pursuant to Articles 4 and 5.

(2) The transfer shall be made according to the normal official exchange rate effective on the date of the transfer.

Article 7. Subrogation

If a Contracting Party or its designated agency makes payment to its own investors under a guarantee it has accorded in respect of an investment 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 country, of any right or claim from the investor to the former Contracting Party or its designated agency; as well as
- (b) That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of those investors and shall assume the obligations related to the investment.

Article 8. 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 nationalization of an investment shall, as far as possible, be settled by the disputing parties 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 the investors of the other Contracting Party on the basis of treatment no less favorable than that accorded to investments of its own investors or investors of any third State, whichever is more favorable to the investor.

(3) If the dispute cannot be settled within six (6) months from the date on which the claim has been raised by either party, it shall be submitted upon request of the investor of the Contracting Party to the International Centre for Settlement of Investment Disputes (ICSID) established by the Convention of the Settlement of Investment Disputes between States and Nationals of other States opened for signature in Washington on 18 March 1965, or ICSID additional facility.

(4) 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 9. Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultation or negotiation.

(2) If the dispute cannot be settled within six (6) months, it shall upon request of either Contracting Party, be submitted to an ad-hoc Arbitral Tribunal in accordance with the provisions of this Article.

(3) The Arbitral Tribunal shall be constituted for each individual case in the following way: Within two (2) months from the date of receipt of the request 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 (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three (3) 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 to the President of the International Court of Justice to make the appointments. If he happens to be a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the Vice President shall be invited to make the appointments. If the Vice President also happens to be 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 appointments.

(5) The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding.

(6) Each Contracting Party shall bear the cost 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 Arbitral 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 10. 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, or by general principles of international law, 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 the more favorable to his case.

(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 favorable than that accorded by this Agreement, the more favorable treatment shall be accorded.

(3) Either Contracting Party shall observe any other obligation it may have entered into with regard to investments in its territory by investors of the other Contracting Party.

Article 11. Application of the Agreement

The investments realized in the territory of any of the Contracting Parties, before the entry into force of this Agreement, shall be covered by the protection established in it, at the request of the interested investor. Nevertheless, this Agreement shall not apply to disputes which originated prior to its entry into force.

Article 12. Final Provisions

(1) The Contracting Parties shall notify each other when the constitutional requirement for the entry into force of this Agreement have been completed. The Agreement shall become effective one month after the date of the last notification.

(2) This Agreement shall remain in force for a period of ten(10) years and shall continue to be in force thereafter unless, one year before the expiry of the initial or any subsequent periods, either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

(3) In respect of investments made prior to the termination of this Agreement, the provisions shall continue to be effective for a period of ten(10) years from the date of the termination.

(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.

(5) This Agreement shall be applicable independent from the existence of diplomatic or consular relations between the Contracting Parties.

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

DONE in duplicate at Guatemala on this 1st day of August 2000, in the Korean, Spanish 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 REPUBLIC OF GUATEMALA