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

The Government of the Republic of Korea and the Government of the Republic of Senegal on the other hand, hereinafter referred to as the "Contracting Parties";

Desiring to enhance their economic relations and intensify cooperation between the two countries in order to facilitate their development,

Convinced that a reciprocal protection of investments under a bilateral agreement is likely to stimulate private business initiative and increasing prosperity of both countries;

Recognizing the need to provide fair and equitable treatment to investments of nationals of either Contracting Party in the territory of the other Contracting Party, have agreed as follows.

Article 1. Definitions

For the purposes of this Agreement,

(A) Iinvestisment" shall mean any kind of assets established or recognized in the host country in accordance with its laws and regulations including the list below, or does not be limited to:

(1) Movable and immovable property and any other property rights as well as any soreté privillèges thereto, such as mortgages and pledges;

(2) Stocks, shares and bonds of companies;

(3) Claims, as well as payments to any benefits arising out of a contract;

(4) The tangible and intangible elements of businesses;

(5) Business concessions conferred by law or under contract, including the rechorche extract concessions to exploit natural resources, or the recipient giving a legal position of some duration.

(B) The term "income" means the product resulting from an investment, including any profits interests, profits, dividends, royalties. This list is not exhaustive.

(C) "nationals" means,

(1) With respect to the Republic of Korea, natural persons of Korean nationality and any legal person having its seat in the territory of the Republic of Korea.

(2) In respect of the Republic of Senegal, Senegalese nationality of natural persons and any legal person having its seat in the territory of the Republic of Senegal.

(D) "territory" means,

(1) With respect to the Republic of Korea, the territory of the Republic of Korea;

(2) With respect to the Republic of Senegal, the territory of the Republic of Senegal;

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall encourage the nationals of the other Contracting Party to invest capital in its territory

including in order to create favourable conditions for entry of investment and capital, in accordance with its legislation.

(2) Investors of either Contracting Party made in accordance with the conditions laid down by the national legislation of the host State shall enjoy fair and equitable treatment.

Article 3. National Treatment and Most-favoured-nation Clause

(1) Neither of the Contracting Parties treat will subject, within its territory, the returns of nationals of other Contracting Party to the treatment less favourable than that which it accords to returns of investments or nationals of any third State.

(2) Neither of the Contracting Parties in its territory will subject nationals of the other Contracting Party, as regards the management, use, enjoyment or disposal of their investments to treatment less favourable than that it accords to its own nationals or to nationals of any third State.

Article 4. Compensation

In the case of nationals of one Contracting Party whose investments in the territory, the other Contracting Party suffer losses owing to war or other armed conflict, revolution, state of emergency, national revolt or riot, insurrection or similar effect occurring in the territory of the other Contracting Party, the treatment accorded by the latter, as regards restitution, indemnification, compensation or other settlement, not less favourable than that it accords to its own nationals or to nationals of any third State.

Article 5. Expropriation

(1) Investments of nationals of either Contracting Party in the territory of the other Contracting Party shall not be expropriated or nationalized, subject to any other measure having similar effect unless the following conditions are met:

(a) The measures are taken in the public interest and in accordance with the procedures required by law;

(b) The measures are not discriminatory; and

(c) The measures shall be accompanied by the payment of prompt, effective and adequate compensation, which shall be freely transferable between the territories of the Contracting Parties.

(2) The provisions of paragraph (1) of this article shall also apply to income from an investment.

Article 6. Returns of Investments and Income

(1) Subject to its laws and regulations, each Contracting Party shall allow the transfer without delay in any convertible currency of:

(a) The net profits, dividends, royalties, technical assistance and service fees, interests and other current income related to investments of nationals of the other Contracting Party;

(b) The proceeds of the total or partial liquidation of any investment made by the nationals of other Contracting Party;

(c) Repayments of loans by nationals of either Contracting Party to the nationals of the other Contracting Party;

(d) The remuneration of nationals of the other party contractnate who are allowed to work in its territory in connection with an investment.

(2) Each of the Contracting Parties undertake to accord to transfers referred to in paragraph (1) of this article treatment no less favourable than that accorded to transfers originating from investments made by nationals of any third State.

Article 7. Exemptions

Notwithstanding the provisions of article 3 and Article 6 paragraph (2) of this Agreement, a Contracting Party which has concluded with one or more other States an agreement regarding the formation of a customs union or a free-trade area or any other treaty establishing cooperation based on economic or monetary special affinity, shall be free to grant a more favourable treatment to investments of the State or States which are also Parties to the treaty or by nationals of some of these States.

A Contracting Party shall also be free to grant a more favourable treatment to investments by nationals of other States O by its own nationals if such treatment is provided for under bilateral agreements concluded with these States prior to the date of signature of this Agreement or by its domestic laws.

Article 8. Settlement of Disputes between a Contracting Party and a National of the other Contracting Party

(1) In the event of a dispute concerning an investment occurs between a Contracting Party and a national of the other Contracting Party on the territorie of that Party, the parties to the dispute seek to resolve the dispute through consultation and negotiation.

(2) If the dispute has not been settled in accordance with paragraph (1) of this article within a period of six months from the date of submission of the request for consultations and negotiations, each Contracting Party agrees to submit to the International Centre for Settlement of Investment Disputes (ICSID) for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965, any legal dispute between the Contracting Party and a national of the other Contracting Party relating to an investment made by that national in the territory of the former Contracting Party.

Article 9. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties relating to the interpretation or application of this Agreement shall, as far as possible, be settled through diplomatic channels.

(2) If a dispute between the Contracting Parties cannot be settled in this way, it shall be submitted, at the request of one of the Contracting Parties, to an arbitral tribunal.

(3) The 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; and then these two members shall select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal; and the Chairman shall be appointed within two months from the date of appointment of the two 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 any other agreement, invite the President of the International Court of Justice to make the appointments nécéssaires. if the President is a national of either Contracting Party or if he is empéché for any reason to carry out those functions, 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 is also empéché to fulfil the function, the said member of the International Court of Justice in next authority immediately and who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall be taken by a majority of votes. the decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the Tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. However, it is open to the Court in its decision that a higher proportion of direct costs be borne by one of the two parties, and this award shall be binding on both parties. the Tribunal shall draw up its own rules of procedure.

Article 10. Subrogation

If a Contracting Party by virtue of a guarantee given in respect of an investment in the territory of the other Contracting Party makes payment to its own nationals, the other Contracting Party, without prejudice to the rights of the first Contracting Party under article 9, recognize the transfer, by virtue of the law or a transaction of all the rights and claims of such nationals to the first Contracting Party as well as the its subrogation in favour of all the rights and claims (rights transmitted) that the first Contracting Party shall be authorised to exercise to the same extent as its predecessor. With regard to the transfer of payments to carry out by the Contracting Party in question under the transmission of rights, the provisions of article 3 and Article 4 shall apply mutatis mutandis.

Article 11. Entry Into Force

(1) This Agreement shall be subject to specific constitutional ratification procedures to each party as well as the instruments

of ratification shall be exchanged as soon as possible.

(2) This Agreement shall enter into force after the date of the exchange of instruments of ratification.

Article 12. Duration, Amendment and Termination

(1) This Agreement shall remain in force for a period of ten years and shall continue to be denounced unless it is in accordance with the provisions of paragraph (3) of this article. it shall apply to existing investments at the time of entry into force as well as to investments made or acquired thereafter.

(2) Each Party may submit to the other party in writing and through diplomatic channels of the draft amendments. any amendment shall enter into force as soon as it is the subject of an agreement between the two parties.

(3) Either party may one-year by giving written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten-year period or at any time after that date.

(4) With respect to investments made or acquired prior to the date of termination of this Agreement and to which this Agreement applies, the provisions of all of the other articles of this Agreement shall continue to apply for a further period of ten years after the date of termination.

In WITNESS WHEREOF, the respective Plenipotentiaries have signed this Agreement.

Done in two originals in Seoul on 12 July 1984 in French and Korean languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF THE REPUBLIC OF SENEGAL