

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF HIS MAJESTY THE SULTAN AND YANG DI- PERTUAN OF BRUNEI DARUSSALAM CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Republic of Korea and the Government of His Majesty The Sultan and Yang Di-Pertuan of Brunei Darussalam (hereinafter referred to as "the Contracting Parties"),

Desiring to create favourable conditions for greater economic co-operation between the two countries and, in particular for investments by investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit,

Recognising that the encouragement and reciprocal protection under international agreements of such investments will be conducive to the stimulation of business initiatives and will increase prosperity in both countries,

Recognising the importance of the transfer of technology and human resources development arising from such investments,

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 in, stocks and debentures of, and any other form of participation in a company or any business enterprise and rights or interest derived therefrom as well as securities or bonds issued by a Contracting Party;
- (c) Claims to money or to any performance under contract associated with any investment having an economic value;
- (d) Intellectual property rights including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, technical processes, trade secrets and know-how, and goodwill; and
- (e) Business concessions having an economic value conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any change of the form in which assets or rights 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 nationals or juridical persons of one Contracting Party who invest in the territory of the other Contracting Party:

(a) The term "nationals" means natural persons who are accorded the status of a national of a 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, organisations, corporations or associations, incorporated or constituted in accordance

with the laws and regulations of that Contracting Party, irrespective of whether or not their activities are directed to profit, organised with limited or unlimited liability.

4. "territory" means:

(a) In respect of the Republic of Korea, the territory of the Republic of Korea as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea over which the Republic of Korea exercises, in accordance with international law and with its legislation, sovereign rights or jurisdiction for the purpose of exploration and exploitation of the natural resources of such areas.

(b) In respect of Brunei Darussalam, the territory of Brunei Darussalam and the maritime areas adjacent to the coast of Brunei Darussalam to the extent to which Brunei Darussalam may exercise sovereign rights or jurisdiction in accordance with international law and its legislation.

## **Article 2. Promotion and Protection of the Investments**

1. Each Contracting Party shall encourage and promote 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, 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 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 of the other Contracting Party.

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party as regards operation, management, maintenance, use, enjoyment or 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 of the other Contracting Party.

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 the investors of the other Contracting Party the benefit of any treatment, preference or 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 situations 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.

2. Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer damage or 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 an investor of the other Contracting Party or to an investor of any other State.

## Article 5. Expropriation

1. Investments of investors of one Contracting Party shall not be nationalised, expropriated or otherwise subjected to any other measures having an effect equivalent to nationalisation 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.
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 or LIBOR rate, whichever is higher, from the date of expropriation until the date of payment and shall be made without undue delay, be effectively realisable and be freely convertible and transferable.
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;
  - (f) Compensation pursuant to Articles 4 and 5; and
  - (g) Payments pursuant to Article 7.
2. All transfers under this Agreement shall be made in a freely convertible currency, without undue restriction and delay, at the market exchange rate, prevailing at the date of the transfer.
3. In the event a market exchange rate does not exist, the rate of exchange shall correspond to the cross rate obtained from those rates which would be applied by the International Monetary Fund, on the date of payment, for conversions of the currencies concerned into Special Drawing Rights.

## Article 7. Subrogation

1. If one Contracting Party or its designated agency ("the first Contracting Party"), makes a payment to any of its investors under an indemnity given in respect of an investment in the territory of the other Contracting Party ("the second Contracting Party"), the second Contracting Party shall recognise:
  - (a) The assignment to the first Contracting Party by law or by legal transaction of all the rights or claims of the investor indemnified; and
  - (b) That the first Contracting Party is entitled to exercise such rights and to enforce such claims by virtue of subrogation, to the same extent as the investor indemnified.
2. The first Contracting Party shall be entitled in all circumstances to the same treatment with regard to:
  - (a) The rights and claims acquired by virtue of the assignment; and
  - (b) Any payments received in pursuance of those rights and claims, as the investor indemnified was entitled to receive by

virtue of this Agreement in respect of the investment concerned and its related returns.

## **Article 8. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Investment disputes between one Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled amicably between the parties in dispute.
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 a dispute cannot be settled within six (6) months of the date when it was raised, it shall, upon the request of the investor of the other Contracting Party, be submitted to arbitration. The arbitration shall be conducted in accordance with the Arbitration Rule of the United Nations Commission for International Trade Law unless the parties to the dispute agree otherwise.
4. In the event of both Contracting Parties having become Contracting States of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March, 1965 (the ICSID Convention), disputes under this Article shall be submitted for arbitration under the ICSID Convention unless the parties to the dispute agree otherwise.
5. Each Contracting Party hereby consents to the submission of a dispute to arbitration in accordance with the procedures set out in this Agreement.
6. The award made as a result of paragraph (3) or (4) of this Article shall be final and binding on the parties to the dispute. An investor may seek enforcement of an arbitration award in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 or the ICSID Convention, if both Contracting Parties are parties to such instruments.
7. During arbitration proceedings or the enforcement of an award, the Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of its loss.

## **Article 9. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of the Agreement shall, if possible, be settled by consultation through diplomatic channels.
2. If any dispute cannot be settled within six(6) months, it shall, upon the request of either Contracting Party, be submitted to an ad hoc Arbitral Tribunal in accordance with the provisions 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 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, which enjoys diplomatic relations with both Contracting Parties, 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 appointments. 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 is also 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 10. Application of other Rules**

1. Where bilateral or multilateral agreements to which both Contracting Parties are parties, provide more favourable treatment in respect of investments of either Contracting Party or its investors than this Agreement, such agreements shall apply to the extent that they are more favourable than this Agreement.
2. Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.
3. 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 11. Application of the Agreement**

The Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning investments which was settled before its entry into force.

## **Article 12. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force thirty(30) days after the last notification in writing that the Contracting Parties have fulfilled all the legal requirements for the entry into force of this Agreement.
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 date of termination of this Agreement, the provisions of Article 1 to 11 of this Agreement shall remain in force for a further period of fifteen(15) years from the date of termination of this Agreement.
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.

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

DONE in duplicate at Bandar Seri Begawan on the 14th day of November 2000 in the Korean, Malay, 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 HIS MAJESTY THE SULTAN AND YANG DI-PERTUAN OF BRUNEI DARUSSALAM