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

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

Desiring to create favourable conditions for greater 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 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 purposes of this Agreement:

(1) "Investments" means every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations 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 or pledges;

(b) Shares in, stocks and debentures of, and any other form of participation in a company;

(c) Claims to money or to any performance under contract having a economic value;

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

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

(f) Goods that, under a leasing contract, are placed at the disposal of a lessee.

Any change of the form in which assets are invested or reinvested does 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, fees and other current incomes.

(3) "Investors" means any natural or legal persons of one Contracting Party who invest in the territory of the other Contracting Party:

(a) "natural persons" means physical persons having the nationality of the State of the former Contracting Party in accordance with its laws; and

(b) "legal persons" means any companies, organizations, corporations or associations incorporated or constituted in accordance with the laws and regulations of the State of the former Contracting Party.

(4) "Territory" means the territory of the Republic of Korea or the territory of the Republic of Belarus 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, 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) "Laws and regulations" in respect of either Contracting Party means the laws and regulations of the State of the Contracting Party concerned.

Article 2. Promotion and Protection of Investments

(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 legal 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 management, maintenance, use, enjoyment or disposal of investments in its territory of 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 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 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 favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable.

(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:

(a) Any existing or future free trade area, customs or economic union or similar international agreement to which either of the Contracting Parties is or may become a party,

(b) Any international agreement or arrangement relating wholly or mainly to taxation, or

(c) Any domestic legislation relating wholly or mainly to taxation without prejudice for fair and equitable treatment among foreign investors.

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. 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 situations 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 required by the necessity of the situation,

Shall be accorded restitution or adequate compensation no less favourable than that would be accorded under the same circumstances to an investor of the other Contracting Party or of any third 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 subjected to any other 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 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 genuine value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall be paid to the investor within a three month period in the currency in which the initial investments were made, be effectively realizable and be freely 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 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 after they have fulfilled all their tax and public fees obligations the free transfer of their investments and returns. Such transfers shall include, in particular, though not exclusively:

(a) Returns as defined in paragraphs 2 of the Article 1 of this Agreement;

(b) Proceeds accruing from 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 the territory of the first Contracting Party;

(e) Additional funds necessary for the maintenance or development of the existing investments;

(f) Compensation pursuant to Articles 4 and 5.

(2) All transfers under this Agreement shall be made in a freely convertible currency, without undue restriction and delay, at the exchange rate which is effective for the current transactions.

Article 7. Subrogation

If a Contracting Party or its designated 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, by law or legal transaction, of any rights or claims from investors to the former Contracting Party or its designated agency, and

(b) That the former Contracting Party or its designated agency is entitled to exercise such rights and enforce such claims to the same extent as those investors.

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

(1) Any dispute between a Contracting Party and the investor of the other Contracting Party including those concerning expropriation shall, as far as possible, be settled by the parties to the dispute through consultations.

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

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

(b) The International Centre for Settlement of Investment Disputes established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965; or

(c) An ad hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

(3) Each Contracting Party hereby consents to the submission of an investment dispute to international arbitration. The award made by such international arbitration 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.

(4) The Contracting Party which is party to the dispute shall at no time whatsoever during the settlement procedure or the execution of the sentence allege as a defence its immunity or the fact that the investor has received compensation under an insurance contract covering the whole or part of the incurred damage or loss.

(5) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other Contracting Party does not abide by and comply with the award rendered by an arbitral tribunal.

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, at 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, 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 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 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 favourable 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 favourable than that accorded by this Agreement, the more favourable 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

Since the date of entry into force of this Agreement it shall apply to all investments as they are defined in the Article 1 of this Agreement, 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) Each Contracting Party shall notify the other Contracting Party in writing of the completion of its domestic legal procedures required for the entry into force of this Agreement. This Agreement shall enter into force thirty(30) days after the date of the latter of the two notifications.

(2) This Agreement shall remain in force for a period of fifteen(15) years and shall remain in force thereafter 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 receipt of the notification of expiry, 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 the receipt of the notification of expiry.

(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 authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Seoul on the 22nd day of April 1997, in the Korean, Belarusian 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 BELARUS