

Signed at Seoul May 27, 2005

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE SLOVAK REPUBLIC FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

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

Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the State of the other Contracting Party,

Conscious that the promotion and reciprocal protection of investments on the basis of this Agreement will be conducive to stimulating business initiatives in this field,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. "investment" means every kind of assets or rights invested by investors of one Contracting Party in the territory of the State 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;
- c) Claims to money or to any performance under contract 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. "return" means the amount yielded by investments and, in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and all kinds of fees.

3. "investor" means any natural or legal person of one Contracting Party who invest in the territory of the State of the other Contracting Party:

- a) The term "natural person" means natural person having the nationality of that Contracting Party in accordance with its laws; and
- b) The term "legal person" means any entity, which is incorporated or constituted in accordance with the laws and regulations of one of the Contracting Parties.

4. "territory" means:

a) As regards 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) As regards the Slovak Republic, the land territory, internal waters and the air space above them, over which it exercises its sovereignty, sovereign rights and jurisdiction in accordance with international law.

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.

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

1. Each Contracting Party shall encourage and create favourable conditions in its territory for investors of the other Contracting Party to make investments in the territory of the State and shall admit such investments in accordance with its laws and regulations.

2. Investments made by investors of each Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the State 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 state territory by investors of the other Contracting Party.

## **Article 3. Treatment of Investments**

1. Each Contracting Party shall in the territory of the State 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 to investors.

2. Each Contracting Party shall in the territory of the State accord to investors of the other Contracting Party as regards operation, 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 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 the investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of any international agreement relating wholly or mainly to taxation.

4. The non-discrimination, national treatment and most-favoured nation treatment provisions of this Agreement shall not apply to all actual or future advantages accorded by either Party by virtue of its membership of, or association with, a customs, economic or monetary union, a common market or a free trade area; to nationals or companies of its own, of Member States of such union, common market or free trade area, or of any other third country.

## **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, whichever is more favourable.

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 forces or authorities of the other Contracting Party; or

b) Destruction of their property by forces or authorities of the other Contracting Party 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. 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 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.
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. In both expropriations and compensation, treatment no less favourable than that which the Contracting Party accords to its own investors or to investors of any third State shall be accorded.
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, after fulfillment of their financial obligations, the free transfer of payments, including principals, and returns related to their investments. 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 state 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 restriction and delay, at the exchange rate applicable at the date of the transfer.
3. Notwithstanding paragraphs 1 and 2 above, a Contracting Party may adopt or maintain measures relating to cross-border capital transactions:
  - a) In the event of serious balance of payments and external financial difficulties or threat thereof or
  - b) In cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.
4. Measures referred to in paragraph 3 of this Article:
  - a) Shall not exceed those necessary to deal with the circumstances set out in paragraph 3 of this Article;
  - b) Shall be temporary and eliminate as soon as conditions permit; and
  - c) Shall be promptly notified to the other Contracting Party.

## **Article 7. Subrogation**

1. If a Contracting Party or its designated agency makes a payment to its own investors under a guarantee or indemnity given in respect of investments in the territory of the State 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 designated agency; and
  - b) That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights of and enforce the claims of those investors.
2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

## **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 an investor of the other Contracting Party shall, as far as possible, be settled by the parties to 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, it shall be submitted upon request of the investor of the Contracting Party,
  - a) To the International Center for Settlement of Investment Disputes (ICSID) established by the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States in case both Contracting Parties are parties to this Convention or
  - b) To an international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

Each Contracting Party gives its consent to the submission of dispute to international arbitration set out in subparagraph a) and b). 4. The award 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 by consultation through diplomatic channels.
2. If the 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 and this decision shall be binding for both Contracting Parties.

7. The Arbitral Tribunal shall determine its own procedure for arbitral proceedings.

## **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 State of the other Contracting Party from taking advantage of whichever rules are 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.

## **Article 11. 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, which was settled before its entry into force.

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

1. This Agreement is subject to an approval in accordance with procedures required by law of both Contracting Parties for bringing this Agreement into force and it shall enter into force on the 90th day after the date of Contracting Parties notification confirming that all legal formalities required by law for bringing this Agreement 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 11 of this Agreement shall remain in force for a further period of twenty(20) years from the date of termination.

4. This Agreement may be modified or supplemented by Contracting Parties' mutual consent. Modifications and supplements must be done in a written way.

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

DONE in duplicate at Seoul, on the 27th day of May 2005, in the Korean, Slovak and English languages, all texts being equally authentic. In the case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF THE SLOVAK REPUBLIC