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# Agreement between the Union and the economic belgo-luxembourg

# The Government of the Republic of Korea concerning the encouragement and reciprocal protection of investments

The Government of the Kingdom of Belgium,

The Walloon Government,

The Flemish Government,

The Government of the Brussels-Capital Region,

And

The Government of the Grand Duchy of Luxembourg, on the one hand, and

The Government of the Republic of Korea, of the other part,

(hereinafter referred to as the contracting parties),

Desiring to create favourable conditions for the development of investments of investors of either Contracting Party in the territory of the other contracting party, based on the principles of equality and mutual benefit;

Recognizing that the promotion and protection of investments on the basis of this agreement will stimulate the individual business initiative and increasing prosperity in both States,

Recognising that each Contracting Party has the right to establish its own levels of environmental protection, to define its policies and priorities for development and its own labour standards of protection, and to adopt or modify its legislation accordingly relating to the environment and labour,

Whereas neither Contracting Party shall amend its national legislation or assouplira environmental or labour in a manner that undermines the universally recognized rights of workers in order to encourage trade or investment maintenance or the expansion of the investment that shall be made in its territory,

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. The term investments means every kind of asset owned or controlled directly or indirectly by an investor of one Contracting Party in the territory of the other contracting party, including but not limited to:

(a) Movable and immovable property and any other property rights such as mortgages, liens or pledges, leases,

(b) Stocks and shares, debentures and any other forms of minority holdings, even in the capital of a company or business enterprise and any interest or rights derived therefrom;

(c) Claims and rights to any performance under contract having an economic value;

(d) Intellectual property rights, including copyrights, patents, trademarks, trade names, industrial designs, technical

processes, trade secrets and know-how, and goodwill;

(e) Having an economic value business concessions granted by law or under contract, including those relating to prospecting, culture, extract or exploit natural resources.

Any alteration of the form in which assets have been invested or reinvested does not affect their status as investments.

2. The term means the amounts yielded returns by investments and in particular, though not exclusively, interests, profits, capital increases, dividends, royalties and all kinds of fees;



3. The term investor means any natural or legal person of one Contracting Party who invests in the territory of the other Contracting Party:

(a) The term natural person shall mean any natural person having the nationality of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of Korea, in accordance with their respective laws, and

(b) The term "legal person" means all entities such as corporations, public authorities, institutions, foundations, associations, companies, institutions, organizations, corporations or associations incorporated or constituted in accordance with the laws and regulations of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of Korea.

4. The term territory means the Territory of the Kingdom of Belgium, the territory of the Grand Duchy of Luxembourg, or the territory of the Republic of Korea, as well as the 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 and jurisdiction for the purpose of the exploration and exploitation of natural resources of such areas; and

5. The term freely convertible currency means any currency that is widely used to settle international transactions and widely traded in the principal international exchange markets.

## Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote investments in its territory, create favourable conditions for their implementation by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.

2. Investments made by investors of either Contracting Party shall at all times fair and equitable treatment and shall enjoy, in the territory of the other Contracting Party, protection and full and constant security.

3. No Contracting Party shall, by Arbitrary or impede Discriminatory Measures The 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 accord to returns of investments and investors of the other contracting party in its territory which treatment shall not be less favourable than that which it accords to its own and returns of investments or investors to returns of investments and investors of any third State according to the more favourable treatment to investors concerned.

2. As regards the exploitation, management, maintenance, use, enjoyment and disposition of sale or other investments, each Contracting Party shall accord to investors in its territory of the other contracting party a treatment which shall not be less favourable than that it accords to its own investors to investors or of any third State according to the more favourable treatment to investors concerned.

3. Such treatment shall not apply to privileges granted by either contracting party to investors of third States by virtue of its participation or association with any existing or future economic, a customs union or common market or a free trade area or similar international agreement.

4. The provisions of paragraphs 1 and 2 of this article shall not be construed so as to oblige one contracting party to extend to investments of 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, including any agreement for the avoidance of double taxation.

## Article 4. Compensation for Losses

Investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, a national state of emergency, revolt or riot, insurrection or any other similar situations occurring in the territory of the other contracting party benefit, on the part of this latter, from a treatment as regards, restitution, indemnification, compensation or other types of compensation, which shall not be less favourable than that accorded by the latter contracting party to its own investors to investors or 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 expropriated or nationalized, subject to any other measure having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropria-tion") in the territory of the other Contracting Party, except in the public interest and for the payment of prompt, effective and adequate compensation. The expropriation shall be carried out on a non-discriminatory basis and in accordance with due process.

2. The amount of compensation shall be commensurate with the fair market value of the expropriated investment immediately before the time when the decision was taken for expropriation and the intention to expropriate has been made public, after the first situation; the compensation shall include at the applicable commercial interest rate from the date of expropriation until the date of payment, they shall be made without undue delay, be effectively realizable and freely transferable. As regards both the treatment, expropriation and compensation shall not be less favourable than that which the Contracting Party accords to its own investors to investors or of any third State.

3. Investors of one contracting party affected by expropriation shall be entitled to seek review as soon as possible by a judicial or other independent authority of the other contracting party of its case and of the valuation of the investment in accordance with the principles set out in this article.

4. Where a contracting party expropriating the assets of a company established or constituted in accordance with its laws and regulations, and in which investors of the other contracting party own shares, bonds or other forms of equity, the provisions of this article shall apply.

## Article 6. Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of their investments and incomes. Such transfers shall include in particular, though not exclusively:

(a) The capital increases net profits, interest, dividends, royalties, fees and any other current investment income;

(b) Proceeds from the sale or the total or partial liquidation of investments;

(c) The necessary funds in repayment of loans related to investments;

(d) The earnings of nationals of the other Contracting Party who are authorised to work in connection with investments in its territory,

(e) The additional funds necessary for the maintenance or development of Existing investment;

(f) The amounts intended for the management of the investment in the territory of the other contracting party or a third State; and

(g) The compensation paid pursuant to articles 4 and 5.

2. All transfers under this Agreement shall be effected in a freely convertible currency, without any restriction or undue delay at the market rate of exchange applicable on the date of transfer.



3. Notwithstanding any provisions to the contrary in this agreement, either Contracting Party may, in accordance with its laws and regulations, adopt or maintain measures inconsistent with its obligations under this article:

(a) In the event of serious difficulties or threat of serious difficulties in the balance of payments or external financial situation, or

(b) If, in exceptional circumstances, capital movements of cause or threaten to cause serious difficulties for macroeconomic management, including monetary and exchange rate policies.

4. The measures referred to in paragraph 3 above:

(a) Shall be consistent with the Articles of Agreement of the International Monetary Fund;

(b) Do not go beyond what is necessary to deal with the circumstances described in paragraph 3 above,

(c) Shall be temporary and shall be eliminated as soon as conditions permit,

(d) Shall be notified promptly to the other contracting party.

## Article 7. Subrogation

1. If one contracting party or its designated agency pays compensation to its own investors under a guarantee given in respect of investments made in the territory of the other contracting party, the other Contracting Party shall recognize:

(a) The assignment by law or by means of a legal act in the State concerned, to the first Contracting Party or its designated agency of any rights or claims from investors,,

(b) The first Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and assert the claims of those investors.

2. Transfer of any rights or claims shall not be greater than 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 which may arise between one of the Contracting Parties and an investor of the other contracting party in connection with an alleged breach of an obligation under this Agreement, including in the context of an expropriation or nationalization investments will be subject to a written notification by the most expeditious and shall, if possible, be settled amicably between the parties to the dispute. The notification shall be accompanied by an aide-memoire sufficiently detailed.

2. Domestic remedies provided for by the laws and regulations of one Contracting Party in the territory of which the investment has been made shall be available to investors of the other Contracting Party on the basis of treatment which shall not be less favourable than that which would be accorded to its own investors or investments of investors of any third State according to the more favourable treatment to investors concerned.

3. In the absence of a settlement of the dispute within six (6) months from the date on which it was raised by one of the Parties if the investor and waives the right to use either of the remedies referred to in paragraph 2 of this article with respect to the same dispute, it shall be submitted, at the request of the investor of the Contracting Party concerned:

(a) The International Centre for the 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, or

(b) The additional facility of the Centre, if it cannot be appealed to the ICSID or

(c) The UNCITRAL Arbitration Rules; or

(d) Any other institution or to arbitration under any other arbitration rules, subject to the agreement of both parties to the dispute.



4. Notwithstanding the fact that the investor has submitted the dispute to international arbitration in accordance with paragraph 3, it may initiate proceedings of an interim injunctive relief not involving the payment of damages before the courts or administrative tribunals of the Contracting Party Party to the dispute, with a view to the preservation of its rights and interests.

5. Each Contracting Party consents hereby provided that the dispute be submitted to arbitration in accordance with the procedures set out in this Agreement. this consent implies that both parties shall waive the requirement of exhaustion of all administrative or judicial remedies.

6. The awards rendered in international arbitration pursuant to this article shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to recognise and execute the award in accordance with its laws and regulations.

7. The investor shall not be entitled to submit a dispute to arbitration under this section if more than five years have elapsed from the date on which the investor is aware, or should have become aware of facts that gave rise to the dispute.

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

1. Disputes between the contracting parties relating to the interpretation or application of this Agreement shall, if possible, be settled through consultation or through diplomatic channels.

2. In the absence of a settlement within six (6) months, the dispute shall be submitted, at the request of either Contracting Party, 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: (2) within two months 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 shall be appointed Chairman of the Tribunal, subject to the agreement of both contracting parties. The Chairman shall be appointed within two (2) months from the date on which the other two members have been appointed.

4. If the appointments have not been made within the periods specified in paragraph 3 of this article, either Contracting Party may request the President of the International Court of Justice to make the necessary appointments. If the President of the Court is a national of either Contracting Party or if he is otherwise prevented from exercising this function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President of the Court is also a national of either Contracting Party or if he is also prevented from exercising this function, the highest the member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decisions by a majority of votes.Its decisions shall be binding on both contracting parties.

6. The arbitral tribunal shall determine its own rules of procedure.

7. Each Contracting Party shall bear the cost of the member appointed by it, as well as the costs for its representation in the arbitration proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by both contracting parties. The arbitral tribunal may, however, stipulate in its decision that a higher proportion of costs shall be borne by one of the two contracting parties.

## Article 10. Application of other Rules

1. Where a matter is governed by this Agreement and simultaneously by an international agreement to which both parties are contracting parties, or by general principles of international law, nothing in this Agreement shall prevent either Contracting Party or any of their investors from taking advantage of those rules which are more favourable.

2. If the treatment granted by either 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. Each Contracting Party shall observe any written obligation which would have entered into force in respect of investments made in its territory by investors of the other contracting party.

## Article 11. Implementation of the Agreement

This Agreement shall apply to all investments, whether made before or after its entry into force. However, this Agreement shall not apply to investment disputes which are the subject of a dispute settlement procedure under the Agreement concerning the encouragement and reciprocal protection of investments between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Republic of Korea, signed on 20 December 1974 in Brussels. This Agreement shall continue to apply to investments in so far as it is a dispute referred to above.

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

1. This Agreement shall enter into force thirty (30) days after the date on which the contracting parties have notified each other in writing that their respective legal procedures necessary for its entry into force have been completed.

2. This Agreement shall remain in force for a period of twenty (20) years. On expiry of this period, it shall remain in force indefinitely unless either contracting party notifies in writing the other Contracting Party, one year before the expiration of such period of its intention to terminate the agreement.

3. Investments made prior to the date of termination of this Agreement shall continue to be governed by the provisions of articles 1 to 11 for a further period of twenty (20) years from the date of expiry.

4. Upon entry into force of this Agreement, the Agreement concerning the encouragement and reciprocal protection of investments between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Republic of Korea, signed at Brussels on 20 December 1974, shall be terminated and replaced by this Agreement.

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

Done at Brussels on 12 December 2006 each in two originals in English, French, Dutch, English and Korean all texts being equally authentic. The English text will prevail in case of divergence of interpretation.