AGREMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

Signed at Stockholm August 30, 1995

Entered into force June 18, 1997

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

Desiring to develop economic cooperation between the two States,

Intending to encourage and create favourable conditions for investments by investors of one Contracting Party in the Territory of the other Contracting Party on the basis of equality and mutual benefit,

Recognizing that the mutual promotion and protection of investments on the basis of this Agreement stimulates business initiative in this field,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investment" shall comprise every kind of asset, held or invested, directly or indirectly, by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the other Contracting Party, and shall include in particular, though not exclusively:

(a) Movable and immovable property and any other property rights such as mortgages, liens or pledges as well as goods under a leasing agreement;

(b) Shares, stocks and debentures of companies or interest in the property of such companies;

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

(d) Intellectual property rights, technical processes, trade names, trade secrets, know-how, goodwill and other similar rights; and

(e) Business concessions of economic value necessary for conducting economic activities, conferred by law or under contract, including concessions to search for, cultivate, extract and exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their classification as investment.

(2) The term "returns" shall mean the amount yielded by an investment, and in particular, though not exclusively, shall include capital gains, profit, interest, dividends, royalties, fees or other current incomes.

(3) The term "investor" shall mean:

(a) Natural persons having the nationality of a Contracting Party in accordance with its laws, and

(b) Legal persons incorporated or constituted in accordance with the laws of a Contracting Party.

(4) The term "territory" shall mean the territory of the Republic of Korea and the territory of the Kingdom of Sweden 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.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote and encourage within its territory investments made by investors of the other Contracting Party and create favourable conditions for investors of the other Contracting Party for investment and shall admit such investments in accordance with its legislation.

(2) Investments and returns of investors of each Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

Article 3. National and Most-favoured-nation Treatment

(1) Investment made by investors of one Contracting Party in the territory of the other Contracting Party, as also the returns therefrom, shall be accorded treatment which is fair and equitable and not less favourable than that accorded to the investments and returns of the investors of the latter Contracting Party or of any third State.

(2) Each Contracting Party shall accord fair and equitable treatment to investors of the other Contracting Party and shall not impair the management, maintenance, use, enjoyment or disposal of their investment as well as the acquisition of goods and services and the sale of their production, through unreasonable or discriminatory measures.

Article 4. Compensation for Losses

Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall, as regards restitution, compensation or other forms of settlement, be accorded by the latter Contracting Party treatment which is not less favourable than that accorded to its own investors or to the investors of any third State. Resulting payments shall be transferable without delay in a freely convertible currency.

Article 5. Expropriation

(1) Investments made by investors of one Contracting Party shall not be nationalised, expropriated or subjected to measures having, directly or indirectly, effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, unless the following conditions are complied with:

(a) The expropriation is taken in the public interest and under due process of law;

(b) The expropriation is distinct and not discriminatory;

(c) The expropriation is accompanied by provisions for the payment of prompt, adequate and effective compensation, which shall be transferable without delay in a freely convertible currency. Such compensation shall amount to the fair market value of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge and shall include interest from the date of expropriation.

(2) The provisions of paragraph (1) of this Article shall also apply to the returns from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

(3) The investor whose investment was expropriated, shall have the right under the law of the expropriation Contracting Party to prompt review by a judicial or other competent authority of that Contracting Party of his case and of the valuation of his investment in accordance with the principles set out in paragraphs (1) and (2) of this Article.

(4) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, the provisions of this Article shall be applied.

Article 6. Repatriation of Investments

(1) Each Contracting Party shall allow without daly the transfer in a freely convertible currency of:

(a) The returns;

(b) The proceeds from a total or partial liquidation of any investment by an investor of the other Contracting Party;

(c) Funds in repayment of loans related to an investment; and

(d) The earnings of individuals, not being its nationals, who are allowed to work in connection with an investment in its territory and other amounts appropriated for the coverage of expenses connected with the management of the investment.

(2) Any transfer referred to in this Agreement shall be effected at the official exchange rate prevailing on the day the transfer is made.

Article 7. Exceptions

The provisions of Article 3 of this Agreement relative to the granting of treatment not less favourable than that accorded to the investors of either Contracting Party or of any third State 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:

(a) Any existing or future customs union, free trade area, common market, similar international agreement or other forms of regional economic cooperation 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 any domestic legislation relating wholly or mainly to taxation.

Article 8. Subrogation

(1) If a Contracting Party or its designed agency makes a payment to an investor of that Contracting Party under a guarantee given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 10, recognize:

(a) The assignment to the former Contracting Party or its designated agency, whether under law or pursuant to a legal transactions, of any right or claim of the investor; and

(b) That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of such an investor.

(2) The former Contracting Party or its designated agency shall, accordingly, be entitled to assert, if it so desires, any such right or claim to the same extent as its predecessor in title.

(3) Any payment received by the former Contracting Party or its designated agency in pursuance of the rights and claims acquired shall, after payment of taxes due, be freely transferable.

Article 9. 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, including those concerning expropriation or nationalisation of an investment, shall as far as possible be settled by the disputing parties in an amicable way.

(2) The legal remedies under the laws and regulations of the Contracting Party in the territory of which the investment has been made shall be available for the investor of the other Contracting Party on the basis of treatment no less favourable than that accorded by the former Contracting Party to its own investors or investors of any third State, whichever is more favourable to the investor.

(3) If any dispute cannot be settled within six(6) months from the date either party requested amicable settlement, each Contracting Party hereby consents to its submissions to the International Center for Settlement of Investment Disputes 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. If the parties to such a dispute have different opinions as to whether conciliation or arbitration is the more appropriate method of settlement, the investor shall have the right to choose.

(4) For the purpose of this Article, any legal person which is constituted in accordance with the legislation of one Contracting Party and in which before a dispute arises the majority of shares are owned by investors of the other Contracting Party shall

be treated, in accordance with Article 25 (2) (b) of the said Washington Convention, as a legal person of the other Contracting Party.

Article 10. Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, if possible, be settled by negotiations through diplomatic channels.

(2) If a dispute cannot thus be settled within six months, following the date on which such negotiation were requested by either Contracting Party, it shall at the request of either Contracting Party be submitted to an ad hoc Arbitral tribunal.

(3) Such 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 point one member of the Tribunal. The appointed members shall then select a national of a third State, who on the approval of the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within two months from the date of appointment of the other 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 other agreements, invite the President of the International Court of Justice to make such appointments. If the President is a national of either Contracting Party or otherwise is prevented from discharging the said function, 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 too is 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 necessary appointments.

(5) The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be final and 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 costs of the Chairman and the remaining costs shall be borne in equal parts by 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 award shall be final and binding on both Contracting Parties. The Tribunal shall determine its own procedure.

Article 11. Application of the Agreement

(1) This Agreement shall apply to all investment, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose or any claim concerning an investment which was settled before its entry into force.

(2) This Agreement shall in no way restrict the rights and benefits which an investor of one Contracting Party enjoys under national or international law in the territory of the other Contracting Party.

Article 12. Entry Into Force, Duration and Termination

(1) This Agreement shall enter into force on the date when the Contracting Parties notify each other that all legal requirements for its entry into force have been fulfilled.

(2) This Agreement shall remain in force for a period of ten years and continue in force thereafter unless either Contracting Party notifies in writing twelve months 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 Articles to 11 shall remain in force for a further period of ten years.

(4) This Agreement may be revised by mutual consent. Any revision 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.

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

DONE in duplicated at STOCKHOLM this 30th day of August, 1995 in the Korean, Swedish 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 KINGDOM OF SWEDEN