

TREATY BETWEEN THE REPUBLIC OF KOREA AND THE FEDERAL REPUBLIC OF GERMANY CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

THE FEDERAL REPUBLIC OF GERMANY and THE REPUBLIC OF KOREA

DESIRING to intensify economic co-operation between both States,

INTENDING to create favourable conditions for investments by nationals and companies of either State in the territory of the other State, and

RECOGNIZING that a contractual protection of such investments is apt to stimulate private business initiative and to increase the prosperity of both nations,

HAVE AGREED AS FOLLOWS:

Article 1.

(1) Each Contracting Party shall endeavour to admit in its territory investments, in accordance with its laws and regulations framed thereunder, by nationals or companies of the other Contracting Party, and to promote such investments as far as possible. It shall treat, in each case, these investments in a fair and equitable manner.

(2) Investments by nationals or companies of either Contracting Party shall in the territory of the other Contracting Party not be subjected to treatment less favourable than that accorded to investments of its own nationals or companies or investments of nationals or companies of any third State on the ground that ownership or control of them is vested in nationals or companies of the former Contracting Party.

Article 2.

Neither Contracting Party shall in its territory subject activities in connection with investments made by nationals or companies of the other Contracting Party, including the management, use or enjoyment of such investments, to treatment less favourable than that accorded to its own nationals or companies or to nationals or companies of any third State.

Article 3.

(1) Investments by nationals or companies of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

(2) The investments of nationals or companies of either Contracting Party in the territory of the other Contracting Party shall not be expropriated except for the public benefit and against compensation. Such compensation shall represent the equivalent of the investment affected; it shall be actually realizable, freely transferable, and shall be made without undue delay. Adequate provision shall have been made at or prior to the time of the deprivation for the determination and the giving of such compensation. The legality of any such deprivation and the amount of compensation shall be subject to review by due process of law of the Contracting Party in whose territory the investment has been expropriated.

(3) Nationals or companies of either Contracting Party who owing to war or other armed conflict, revolution, national emergency or revolt in the territory of the other Contracting Party suffer the loss of investments situate there, shall be accorded treatment no less favourable by such other Contracting Party than that Party accords to its own nationals or companies, as regards restitution, indemnification, compensation or other valuable consideration. With respect to the transfer of such payments, each Contracting Party shall accord to the requests of nationals or companies of the other Contracting Party a treatment no less favourable than is accorded to comparable requests made by nationals or companies of any third State.

(4) The provisions of paragraphs 1, 2, and 3 above shall likewise apply to returns from investments.

(5) The nationals and companies of either Contracting Party shall enjoy most-favoured nation treatment in the territory of the other Contracting Party in respect of the matters provided for in the present Article.

Article 4.

Either Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party the transfer of the capital, of the returns from it, and in the event of liquidation, of the proceeds from such liquidation.

Article 5.

(1) If either Contracting Party makes payment to its nationals or companies under a guarantee it has assumed in respect of an investment in the territory of the other Contracting Party, the latter Party shall, without prejudice to the rights of the former Contracting Party under Article 11, recognize the transfer of any right or title of such nationals or companies to the former Contracting Party and the subrogation of the former Contracting Party to any such right or title (devolved interest) which the former Contracting Party is entitled to exercise to the same extent as its predecessor in title. As regards the transfer of payments to be made by virtue of the devolved interest to the Contracting Party concerned, paragraphs 2, 3, and 4 of Article 3 as well as Article 4 shall apply mutatis mutandis. Article 11, recognize the transfer of any right or title of such nationals or companies to the former Contracting Party and the subrogation of the former Contracting Party to any such right or title (devolved interest) which the former Contracting Party is entitled to exercise to the same extent as its predecessor in title. As regards the transfer of payments to be made by virtue of the devolved interest to the Contracting Party concerned, paragraphs 2, 3, and 4 of Article 3 as well as Article 4 shall apply mutatis mutandis.

(2) Either Contracting Party shall, without undue delay, inform in writing the other Contracting Party whenever it has assumed a guarantee for an investment in the territory of the latter Contracting Party.

Article 6.

(1) To the extent that those concerned have not made another arrangement admitted by the appropriate agencies of the Contracting Party in whose territory the investment is situated, transfers under paragraphs 2, 3 or 4 of Article 3, under Article 4 or Article 5 shall be made without undue delay and at the rate of exchange effective for current transactions on the day the transfer is made. Article 5 shall be made without undue delay and at the rate of exchange effective for current transactions on the day the transfer is made.

(2) The rate of exchange effective for current transactions shall be based on the par value agreed with the International Monetary Fund and shall lie within the margins above or below parity admitted under section 3 of Article IV of the Articles of Agreement of the International Monetary Fund.

(3) If at the date of transfer no rate of exchange within the meaning of paragraph 2 above exists in respect of the Contracting Party concerned, the official rate fixed by such Contracting Party for its currency in relation to the US dollar or to another freely convertible currency or to gold shall be applied.

If no such rate has been fixed, the appropriate agencies of the Contracting Party in whose territory the capital is invested shall admit a rate of exchange that is fair and equitable.

Article 7.

If the laws and regulations of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties in addition to the present Treaty, result in a position entitling investments by nationals or companies of the other Contracting Party to a treatment more favourable than is provided for by the present Treaty, such position shall not be affected by the present Treaty. Either Contracting Party shall observe any other obligation it may have entered into with regard to investments within its territory by nationals or companies of the other Contracting Party.

Article 8.

(1) The term "investment" shall comprise every kind of asset, and more particularly, though not exclusively,

a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges, usufructs, and

similar right;

- b) Shares or other kinds of interest in companies;
- c) Titles to money or to any performance having an economic value;
- d) Copyrights, industrial property rights, technical processes, trade-names, and good will;
- e) Business concessions under public law.

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

(2) The term "returns" shall mean the amounts yielded by an investment as profit interest for a specific period.

(3) The term "nationals" shall mean

- a) In respect of the Republic of Korea: a person who is deemed to be a national of the Republic of Korea in accordance with its Nationality Law;
- b) In respect of the Federal Republic of Germany: Germans within the meaning of the Basic Law for the Federal Republic of Germany.

(4) The term "companies" shall mean

- a) In respect of the Republic of Korea: any juristic person or any company or association whether or not with limited liability and whether or not for a pecuniary profit, incorporated in the territory of the Republic of Korea and lawfully existing in accordance with its laws and regulations thereof;
- b) In respect of the Federal Republic of Germany: any juristic person as well as any commercial or other company or association with or without legal personality, having its seat in the territory of the Federal Republic of Germany and lawfully existing consistent with legal provisions, irrespective of whether the liability of its partners, associates or members is limited or unlimited and whether or not its activities are directed at profit.

Article 9.

The present Treaty shall also apply to investments made prior to its entry into force by nationals or companies of either Contracting Party in the territory of the other Contracting Party in accordance with the latter's legislation. This provision shall not affect the Agreement of 27 February 1953 on German External Debts.

Article 10.

Each Contracting Party shall cooperate with the other Contracting Party in furthering the interchange and use of scientific and technical knowledge and development of training facilities particularly in the interest of increasing productivity and improving standards of living in their territories.

Article 11.

(1) Disputes concerning the interpretation or application of the present Treaty should, if possible, be settled by the Governments of the two Contracting Parties.

(2) If a dispute cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such arbitral tribunal shall be constituted for each individual case as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as their chairman to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within two months, and such chairman within three months from the date on which either Contracting Party has informed the other Contracting Party that it wants to submit the dispute to an arbitral tribunal.

(4) If the periods specified in paragraph 3 above have not been observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President should 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 should make the necessary appointments.

(5) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding. Each Contracting Party shall bear the cost of its own member and of its counsel in the arbitral proceedings: the cost of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal may make a different regulation concerning costs. Unless both Contracting Parties agree otherwise the arbitral tribunal shall determine its own rules of procedure.

Article 12.

The provisions of the present Treaty shall remain in force also in the event of a conflict arising between the Contracting Parties, without prejudice to the right of taking such temporary measures as are permitted under the general rules of international law. Measures of this kind shall be repealed without undue delay after the date of the actual termination of the conflict but not later than one year thereafter, irrespective of whether or not diplomatic relations have been re-established.

Article 13.

The present Treaty shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Republic of Korea within three months from the entry into force of the present Treaty.

Article 14.

(1) The present Treaty shall be ratified; the instruments of ratification shall be exchanged as soon as possible in Bonn.

(2) The present Treaty shall enter into force one month after the day of exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall continue in force thereafter for an unlimited period except if denounced in writing by either Contracting Party one year before its expiration. After the expiry of the period of ten years the present Treaty may be denounced at any time by either Contracting Party giving one year's notice.

(3) In respect of investments made prior to the date of termination of the present Treaty, the provisions of Articles 1 to 13 shall continue to be effective for a further period of fifteen years from the date of termination of the present Treaty.

DONE at Seoul on February 4th, 1964 in six originals, two in the Korean, two in German and two in the English languages, each text being equally authentic. In the event of a divergence between any of the texts of this Treaty, the English text shall prevail.

For the Federal Republic of Germany:

Bürger

For the Republic of Korea:

Il Kwon Chung

PROTOCOL

On signing the Treaty concerning the Promotion and Reciprocal Protection of Investments concluded between the Republic of Korea and the Federal Republic of Germany the undersigned plenipotentiaries have, in addition, agreed on the following provisions which should be regarded as an integral part of the present Treaty:

(1) The Contracting Parties will within one year after signing the present Treaty enter into negotiations concerning the conclusion of an establishment treaty which should, inter alia, make provision for the following matters: entry and exit, temporary and permanent residence, protection from expulsion, the taking up and carrying on of business and professional activities, the foundation of, and participation in, enterprises without restriction as to capital; labour permits for managerial and technical staff, protection and security of persons and property, free access to courts, freedom to contract, acquisition of real estate and other property, admission as arbitrator.

(2) Article 1

a) Ad paragraph 1

Investments made in accordance with the laws and regulations of a Contracting Party in its territory by nationals or companies of the other Contracting Party shall enjoy the full protection of the present Treaty. To the extent that any admission procedures are required for making an investment, such investment shall enjoy this protection as from the date of the granting of the admission. Either Contracting Party may freely decide on this admission.

b) Ad paragraph 2

Paragraph 2 of Article 1 does not apply to more favourable treatment granted before the entry into force of the present Treaty. The Contracting Parties shall, however, apply their respective laws and regulations, in accordance with paragraph 2 of Article 1, to any treatment granted after the entry into force of the present Treaty.

(3) Ad Article 2

a) The following shall in particular be deemed treatment less favourable as referred to in Article 2:

Restricting the purchase of raw or auxiliary materials, of power or fuel, or of means of production or operation of any kind; impeding the marketing of products inside or outside the country, as well as any other measures having similar effects. Measures taken for reasons of public security and order, public health or morality shall not be deemed treatment less favourable within the meaning of Article 2.

b) In the interest of its national economy either Contracting Party may, in admitting an investment by nationals or companies of the other Contracting Party, make specific stipulations deviating from the treatment provided for in Article 2. If specific stipulations of that nature have been made the provisions of Article 2 shall, to that extent, not be applicable. Such specific stipulations to be effective, shall be made in detail in the document of admission.

c) Article 2 shall not apply to entry, sojourn, and activity as an employee.

(4) Ad Article 3 paragraph 2

Expropriation shall be deemed to be any kind of deprivation by acts of sovereign power of any asset or right which constitutes an investment or is a part thereof, as well as other acts of sovereign power which are tantamount to expropriation, and also measures of nationalization.

(5) Ad Article 4

a) In deviation from Article 4 either Contracting Party may in the document of admission or, if no such document of admission is required, in a written understanding reached before the assets are invested, reserve the right to subject nationals or companies of the other Contracting Party to restrictions of transfer. Either Contracting Party shall apply such restrictions only to the extent required in specific cases by its balance of payments. In any event, the following minimum transfers shall, however, be guaranteed:

a) Transfer of capital remitted to the territory of either Contracting Party for purposes of an investment but not yet invested, in full;

b) Transfer of returns to the extent of annually twenty per cent of the value of the investment as at the date of the transfer;

c) Transfer, in the event of liquidation, of annually twenty per cent of the liquidation proceeds. Where an admission for an investment is required this stipulation shall not be applicable until two years after the date of such admission.

To the extent that the amounts referred to under b and c above have not been transferred within one year, additional transfer of the untransferred amounts in the years following thereafter shall be guaranteed by the Contracting Parties.

b) The term "liquidation" within the meaning of Article 4 shall be deemed to include any disposal effected for the purpose of completely or partly giving up the investment concerned.

(6) Ad Article 5 paragraph 1

Subrogation in Article 5 means such subrogation as is effected by virtue of law or of legal transaction.

(7) Ad Article 6 paragraph 1

A transfer shall be deemed to have been made "without undue delay" within the meaning of paragraph 1 of Article 6 if made

within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the relevant request has been submitted and may on no account exceed two months.

(8) Ad Article 8 paragraph 1

Either Contracting Party may, in individual cases, lay down in the document of admission the amount of capital intended to be invested in its territory and any determine the form in which such capital shall be invested. Either Contracting Party may examine whether the assets so invested correspond in form and value to those referred to in the document of admission. When conspicuous differences arise as to the result of the examination the Contracting Parties may appoint a group of experts to reconsider the examination.

(9) Ad Article 11

Article 11 does not exclude that both Contracting Parties agree in an individual case to invoke the International Court of Justice to decide a dispute concerning the interpretation or application of the present Treaty in lieu of the procedure provided for in Article 11.

(10) Either Contracting Party shall refrain from any discriminatory measures which, contrary to the principles of free competition, are designed to prevent or hinder carriers of the other Contracting Party from participating in the transport of goods that represent an investment within the meaning of the present Treaty. This also applies to goods acquired in the territory of either Contracting Party or of any third State by means of the capital invested in the territory of the Contracting Party concerned within the meaning of the present Treaty.

(11) Without prejudice to any other method of determining nationality, any person shall in particular be deemed to be a national of a Contracting Party who is in possession of a national passport issued by the appropriate authorities of the Contracting Party concerned.

DONE at Seoul on February 4th, 1964 in six originals, two in the Korean, two in German and two in the English languages, each text being equally authentic. In the event of a divergence between any of the texts of this Treaty, the English text shall prevail.

For the Federal Republic of Germany:

Bürger

For the Republic of Korea:

Il Kwon Chung

EXCHANGE OF NOTES

Intending to facilitate and promote the making and development of investments by German nationals or companies in the Republic of Korea the Government of the Republic of Korea will, prior to the entry into force of an establishment treaty the negotiation of which has been provided for, grant the necessary permits to Germany nationals who in connection with investments by Germany nationals or companies, desire to enter, to stay in the Republic of Korea and to carry on an activity there as an employee except in so far as reasons of public order or security or public health or morality in accordance with its laws and regulations may warrant otherwise.

Seoul

I have the honour to confirm the receipt of your letter of today which reads as follows:

"Intending to facilitate and promote the making and development of investments by German nationals or companies in the Republic of Korea the Government of the Republic of Korea will, prior to the entry into force of an establishment treaty the negotiation of which has been provided for, grant the necessary permits to German nationals who in connection with investments by German nationals or companies, desire to enter, to stay in the Republic of Korea and to carry on an activity there as an employee except in so far as reasons of public order or security or public health or morality in accordance with its laws and regulations may warrant otherwise."