

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE REPUBLIC OF COSTA RICA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

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

Desiring to promote greater economic cooperation for the reciprocal benefit of both Contracting Parties,

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

Recognizing that the promotion and protection of investments according to this Agreement will encourage new initiatives in this field,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

(1) "Investment" 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, leases or pledges;
- (b) shares, stocks, and debentures of and any other forms of participation in a company or any business enterprise;
- (c) claims to money related to an investment or to any performance under contract having an economic value;
- (d) intellectual property rights, including rights with respect to copyrights, patents, trade marks, industrial designs, geographical indications, layout-designs, trade names, 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 are invested or reinvested shall 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 and all kinds of fees.

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

- (a) the term "natural persons" means natural persons having the nationality of that Contracting Party in accordance with its laws; and
- (b) the term "legal persons" means any entity such as companies, public institutions, authorities, foundations, partnerships, firms, establishments, organizations, corporations or associations, incorporated or constituted in accordance with the laws and regulations of that Contracting Party, which has its seat or domicile in the territory of that Contracting Party, whether or not they are for profit.

(4) "Territory" means the territory of the Republic of Korea or the territory of the Republic of Costa Rica 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 encourage and create favourable conditions in its territory for investments of investors of the other Contracting Party, 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 protection and security in the territory of the other Contracting Party.
3. 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 territory by investors of the other Contracting Party.

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

1. Once the investment has been admitted, 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 to investors.
2. Once the investment has been admitted, 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 to investors.
3. Nothing in this Article shall be construed so as to oblige one Contracting Party to extend to investments of investors of the other Contracting Party advantages resulting from any existing or future association or participation in a free trade area, customs union, common market, economic and monetary union or any other similar institution of economic integration.
4. Nothing in this Article shall be construed so as to oblige one Contracting Party to extend to investments of investors of the other Contracting Party deductions, fiscal exemptions or any other similar advantages resulting from double taxation agreements or any other agreement regarding tax matters concluded by one Contracting Party and any third State.

## **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, if any, 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 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 investors of the other Contracting Party or to investors 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 due

process of law.

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. It shall include interest based on the applicable commercial rate from the date of dispossession of the expropriated property until the date of payment and shall be made without undue delay, be effectively realizable and be freely transferable. In both expropriation 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 participate or own shares or debentures, the provisions of this Article shall be applied.

## **Article 6. Transfers**

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

- (a) net profit, capital gains, dividends, interest, royalties, fees and any other 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 legally allowed to work in connection with investments in its territory;
- (e) additional funds necessary for the maintenance or development of the existing investments;
- (f) expenses for the management of the investment in the territory of the other Contracting Party or a third State; and
- (g) 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 on the date of transfer, unless otherwise agreed.

## **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, whether under the law or pursuant to a 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 by virtue of subrogation to exercise the rights and enforce the claims of 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 an investor of the other Contracting Party including expropriation or nationalization of investments 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 investor notified in writing the claim to the Contracting Party, it shall be submitted, upon request of either of the parties, to the International Centre 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.

4. The award made by ICSID 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.

5. The Contracting Parties shall not interfere through the use of diplomatic channels in any matter submitted either to the tribunals or to an arbitral tribunal according to the terms of this Article, except in the case that the disputing Contracting Party has not complied with the judicial or arbitral decision.

## **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 through consultation or 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 dictate the judgement on the basis of the norms of this Agreement and other applicable agreements between the Contracting Parties, and on the basis of worldwide recognized principles of international law.

6. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties.

7. Unless otherwise agreed by the Contracting Parties, the arbitral tribunal shall determine its own procedure.

8. 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.

## **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 from taking advantage of whichever rules are the more favourable to its 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**

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 shall enter into force thirty (30) days after the date of the last notification of either Contracting Party to the other Contracting Party that all legal requirements for its entry into force have been fulfilled.
2. This Agreement shall remain in force for a period of ten (10) years and shall continue thereafter indefinitely unless either Contracting Party notifies the other Contracting Party in writing one year in advance, its intention to terminate this Agreement.
3. In respect of investments made prior to the termination of this Agreement, the provisions of Articles 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 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 San Jose on the 11th day of August 2000, in the Korean, Spanish 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 COSTA RICA