

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

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

Wishing to intensify economic cooperation to the mutual benefit of both countries,

Desiring to create favourable conditions for investments of investors of one country in the territory of the other country, and

Recognizing that the encouragement and protection of investments on the basis of this Agreement stimulates business initiative in both countries,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investment" means every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party and in particular, though not exclusively, includes;

(a) Movable and immovable property including any related property rights such as mortgages, liens, pledges;

(b) Shares in, stocks and debentures of, and any other forms of participation in a company or any business enterprise;

(c) Claims to money or to any performance having an economic value associated with an investment;

(d) Intellectual property rights, including copyrights, trademarks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill; and

(e) Any right conferred by laws or under contracts relating to an investment and any licences and permits pursuant to the laws, including the right to search for, extract, cultivate or exploit natural resources.

Any change in the form in which assets are invested shall not affect their character as an investment.

(2) The term "investor" means any natural or juridical person who invests in the territory of the other Contracting Party.

(a) The term "natural person" means with respect to either Contracting Party a natural person having the nationality or citizenship of that Party in accordance with its laws.

(b) The term "juridical person" means with respect to either Contracting Party, any entity incorporated or constituted in accordance with, and recognized as a juridical person by its laws, such as public institutions, corporations, authorities, foundations, companies, partnerships, firms, establishments, organizations and associations irrespective of whether their liabilities are limited or otherwise, and whether or not organized for pecuniary profit.

(3) The term "returns" means amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, shares, dividends, royalties, technical assistance fee or other fees.

(4) The term "territory" means the territory of the Republic of Korea or the territory of the Socialist Republic of Vietnam respectively, where that Contracting Party exercises its sovereignty, sovereign rights or jurisdiction in accordance with international laws.

(5) The term "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 Investments

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

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

Article 3. Investment Treatment

(1) 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 not less favourable than that which it accords to investments and returns of investors of any third country.

(2) 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 not less favourable than that which it accords to the investors of any third country.

(3) Each Contracting Party shall accord, in accordance with its applicable laws and regulations, treatment to the investments and returns of investors of the other Contracting Party as it accords to the investments and returns of its own investors.

(4) The provisions of paragraphs 1, 2 and 3 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

(a) Any existing and future customs union or free trade area, a common external tariff area, a monetary union or similar international agreement or other forms of regional cooperation to which either Contracting Party is or may become a Party; or

(b) Any existing or future convention or other international arrangement relating wholly or mainly to taxation.

Article 4. Compensation for Damage or Loss

(1) Investors of one Contracting Party whose investments or returns suffer losses owing to war, armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third country. Any payment under this Article shall be made promptly, adequately and effectively, and be freely transferable without delay.

Article 5. Expropriation

(1) Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose, under due process of law, on a non-discriminatory basis and provided that it is accompanied by prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriatory action was taken or became public knowledge, whichever is earlier, shall include interest from the date of expropriation at an applicable commercial rate and shall be made without delay, be effectively realizable and be freely transferable.

(2) The investor of one Contracting Party claiming that all or part of his investment has been expropriated shall have a right to prompt review, by a judicial or other independent authority of the other Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in paragraph (1) of this Article.

(3) Where one 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 or other forms of participation, the provisions of paragraphs (1) and (2) of this Article shall apply.

Article 6. Repatriation

(1) The Contracting Parties shall guarantee the transfer of payments related to investments and returns. Such transfers shall include in particular, though not exclusively:

- (a) The net profits, dividends, royalties, technical assistance and technical service fees, interest and other current income, accruing from any investment by an investor of the other Contracting Party;
- (b) The proceeds accruing from the sale or the total or partial liquidation of any investment made by an investor of the other Contracting Party;
- (c) Funds in repayment of loans related to an investment;
- (d) The earnings of nationals of the other Contracting Party who are allowed to work in connection with an investment in its territory;
- (e) Amounts spent for the management of an investment in the territory of the other Contracting Party;
- (f) Additional funds necessary for the maintenance or development of an existing investment; and
- (g) Compensation pursuant to Article 4 and 5.

(2) The transfers shall be made in a freely convertible currency, without undue delay, at the exchange rate which is effective for the current transactions or determined in accordance with the official rate of exchange in force on the date of transfer.

Article 7. Subrogation

If a Contracting Party or its designated agency makes payment to its own investors under a guarantee it has accorded in respect of an investment, the latter Contracting Party shall recognize:

- (a) The assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim from the investor to the former Contracting Party or its designated agency, as well as;
- (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 that investor and shall assume the obligations related to the investment.

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 relating to an investment under this Agreement shall be settled amicably, as far as possible, by the parties to the dispute through consultation and negotiation.

(2) The local remedies under the laws and regulations of one Contracting Party in the territory of which the investment has been made are available for the investor of the other Contracting Party on the basis of treatment not less favourable than that accorded to investments of its own investors or investors of any third State, whichever is more favourable to the investor.

(3) If the dispute cannot thus be settled within six months from the date on which the dispute has been raised by either party, it shall be submitted upon request of the investor or the Contracting Party to International Centre for the Settlement of Investment Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature in Washington on 18 March 1965, in the event the Socialist Republic of Vietnam becomes a Party to this Convention. Until that moment the dispute shall be submitted to conciliation or arbitration procedure to be mutually agreed upon the basis of the Washington Convention.

(4) The award made by ICSID shall be final and binding for the parties to the dispute; each Contracting Party shall ensure the recognition and enforcement of the award in accordance with its relevant laws 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, as far as possible, be settled through consultation or diplomatic channels.

(2) If the dispute cannot be so settled within six (6) months, it shall upon the request of either Contracting Party, be submitted to an 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. Within two(2) months of the receipt of the request for arbitration, each Contracting Party shall appoint 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 (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three(3) 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 to the President of the International Court of Justice to make the appointments. If he happens to be a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointments. If the Vice-President also happens to be a national of either Contracting Party or 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 appointments.

(5) The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the cost of its own arbitrator and its representation 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 shall determine its own procedure.

Article 10. Application of other Rules and Special Commitments

(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 other Contracting Party from taking advantage of whichever rules are the 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.

(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 or any claim concerning an investment 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 on which the Governments of the Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled.

(2) This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, one year before the expiry of the initial or any subsequent periods, either Contracting Party notifies the other Contracting Party in writing of its intention to terminate this Agreement.

(3) In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of twenty years from the date of termination.

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

DONE in duplicate at Seoul on the 13th day of May 1993, in the Korean, Vietnamese 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

Han Sung-joo

FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM

Nguyen Manh Cam