

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE REPUBLIC OF EL SALVADOR FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

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

Desiring to intensify economic cooperation between the two States,

Intending to create favorable 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, and

Recognizing that the 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 purposes of this Agreement:

(1) "Investment" means every kind of asset or rights 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 in, stocks and debentures of, and any other form of participation in a company or any business enterprise;
- (c) Claims to money or to any performance under contract having a financial value;
- (d) Intellectual and industrial property rights, such as technical processes, trade marks or commercial marks, trade names, industrial designs, technical know-how, company name and key rights;
- (e) Business concessions having a financial 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 for each Contracting Party any natural or juridical persons who invest in the territory of a Contracting Party:

- (a) The term "natural persons" means natural persons having the nationality of a Contracting Party in accordance with its laws;
- (b) The term "juridical 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 a Contracting Party.

(4) "Territory" includes the terrestrial, maritime and aerial space under the sovereignty, sovereign rights or jurisdiction of each Contracting Party, in accordance with its respective legislation and international law.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall encourage and create favorable 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 made by investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection in the territory of the other Contracting Party.

Article 3. Treatment of the Investments

(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 no less favorable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State.

(2) 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 of investors of the other Contracting Party.

(3) The provisions of paragraphs (1) and (2) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from any international agreement on double taxation avoidance, free trade areas, customs unions, common markets or economic, monetary and similar unions.

(4) Neither of the Contracting Parties can impose nor oblige the fulfillment of the following requirements or compromises, in relation to any investment in its territory:

(a) Export a determined type, level or percentage of goods or services, in general terms or toward a specific market;

(b) Reach a fixed degree or percentage of the national content;

(c) Acquire, utilize or grant preference to goods or services of national origin or of any internal source;

(d) Relate in any form the volume or value of imports with the volume or value of exports, or with the amount of the entry of foreign exchange, associated with such investment;

(e) Restrict in its territory the sale of goods or services which such investment produces or provides, relating in any manner such sales to the volume or value of its production and its exports, or to the profits in foreign exchange generated; or

(f) Transfer to a natural or juridical person, in its territory, technology, productive process or other reserved knowledge, except when the requirement is imposed by a judicial or administrative tribunal.

Article 4. Compensation

(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.

(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 that was not caused in combat action or was not required by the necessity of the situation,

shall be accorded restitution or compensation no less favorable than that would be accorded under the same circumstances to an investor of the other Contracting Party or to an investor of any third State. (3) Investments of investors of one Contracting Party shall not be nationalized, expropriated or otherwise subject to any other measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for public benefit or social interest. The expropriation shall be carried out on a non-discriminatory basis and against prompt, adequate and effective compensation, in accordance with the legal procedures of the Contracting Party where the expropriation is made.

Such compensation shall amount to the fair market value of the expropriated investments immediately before expropriation became publicly announced, shall not reflect any change in the value of the investment attributable to the public knowledge of the expropriatory action before it was made known by the authorities and shall include interest at the applicable commercial banking rate from the date of expropriation until the date of payment. In both expropriation and compensation, treatment not less favorable than that which the Contracting Party accords to its own investors or to investors of any third State shall be accorded. (4) 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.

Article 5. Transfers

(1) Each Contracting Party shall permit that all transfers relating to the investment of the investors of the other Contracting Party in its territory are made freely and without undue restriction and delay, to or from its territory. Such transfers shall include, in particular, though not exclusively:

- (a) The initial capital and additional amounts to maintain or increase an investment;
- (b) Returns;
- (c) Proceeds accruing from the total or partial liquidation of investments;
- (d) Funds in repayment of loans related to investments;
- (e) Earnings and remuneration of personnel of the other Contracting Party who are allowed to work in connection with investments;
- (f) Compensation pursuant to Article 4;
- (g) Payments from the application of the arrangements relating to the settlement of disputes contained in this Agreement.

(2) All transfers under this Agreement shall be made in a freely convertible currency at the market exchange rate prevailing on the date of transfer.

Article 6. Migratory Situation of Investors

Each Contracting Party shall permit the entry and stay in its territory to investors of the other Contracting Party and to the persons hired by them, with the purpose of establishing, developing, administering or advising the functioning of the investment, in which such investors have undertaken or are ready to undertake capital or other resources, subject to its legislation relating to the entry and stay of aliens.

Article 7. Top Management and Organs of Administration or Operation

Each Contracting Party shall permit that investors of the other Contracting Party appoint the individuals they decide to top management positions or to take part of the administrative or operation organs, regardless of nationality of these individuals, subject to its laws and regulations.

Article 8. Subrogation

If one 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 in that Contracting Party, 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 9. Settlement of Investments 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 of investments shall, as far as possible, be settled in an amicable way, without prejudice to the negotiations which can be done

through the diplomatic channels.

(2) If through such consultations or negotiations, a settlement is not reached within three months from the date of the request of settlement, the investor shall be able to submit the dispute to:

(a) The competent court of the Contracting Party in the territory of which the investment has been made; or

(b) The International Center for the Settlement of Investment Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States; or

(c) An ad-hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(3) Once the investor submits the dispute to the competent tribunal of the Contracting Party in whose territory the investment was made or to an arbitral tribunal, the selection of one or the other procedure shall be definitive.

(4) Each Contracting Party hereby consents to the submission of an investment dispute to international arbitration. The award made by such international arbitration 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) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other Contracting Party does not abide by and comply with the award rendered by an arbitral tribunal.

Article 10. Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of the Agreement shall, if possible, be settled by consultation through diplomatic channels.

(2) If any dispute cannot be settled within six(6) months from the date of notification of the dispute, either Contracting Party shall be able to submit the dispute to an Arbitral Tribunal, in accordance with the provisions of this Article.

(3) Such 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, with which both Contracting Parties maintain diplomatic relations, 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 that is not a national of either Contracting Party shall be invited to make the appointments.

(5) The Arbitral Tribunal shall make a decision on the basis of the provisions of this Agreement, the principles of the international law in this matter, and the general principles of law recognized by the Contracting Parties. The Arbitral Tribunal shall make a decision by a majority of votes and determine its own procedural rules.

(6) The decisions of the Tribunal shall be final and binding for both Contracting Parties.

(7) Each Contracting Party shall bear the costs of its own arbitrator as well as its representation in the arbitral proceedings. The costs of the Chairman and the other costs of the proceedings shall be borne in equal parts by the Contracting Parties, except when the Tribunal decides on other modality.

Article 11. Application of the Agreement

The Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning investments settled before its entry into force.

Article 12. 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 favorable to his case.

(2) If the treatment 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 favorable than that accorded by this Agreement, the more favorable 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.

(4) The investors of the Contracting Parties shall abide by the obligations and responsibilities pertaining to investments and obey the national laws and regulations of the Contracting Party where the investments are made, which shall be enforced in an equitable and non-discriminatory manner.

Article 13. Entry Into Force, Duration and Termination

(1) This Agreement shall enter into force thirty(30) days after the date when the Contracting Parties notify each other that all domestic procedures required by their laws for the entry into force of the Agreement have been fulfilled.

(2) This Agreement shall remain in force for a period of twenty(20) years and shall remain in force thereafter indefinitely unless either Contracting Party notifies the other Contracting Party in writing one year in advance of its intention to terminate this Agreement.

(3) In respect of investments made prior to the termination of this Agreement, the provisions of Article 1 to 12 of this Agreement shall remain in force for a further period of ten(10) years from the date of the termination.

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

DONE at Seoul on the 6th day of July 1998 in duplicate 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 EL SALVADOR