# AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE REPUBLIC OF ITALY CONCERNING THE ENCOURAGEMENT AND THE RECIPROCAL PROTECTION OF INVESTMENTS

Signed at Seoul January 10, 1989
Entered into force June 26, 1992

The Government of the Republic of Korea and the Government of the Republic of Italy (hereinafter referred to as "the Contracting Parites"),

Desiring to intensify economic cooperation between both countries,

Intending to create favourable ocnditions for investments by investors of either country, and

Recognizing that encouragement and protection of such investments will benefit the economic prosperity of both countries,

Have agreed as follows:

Article 1

Either Contracting Party shall promote as far as possible the investments in its territory by investors of the other Contracting Party, admit such investments according to its laws and regulations and accord such investments equitable and reasonable treatment.

Article 2

For the purpose of this Agreement:

(1) The term "investment" means every kind of asset accepted in accordance with the respective laws and regulations of either Contracting party, 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 rights;
(b)shares, stocks and debentures of companies or interests in the property of such companies;
(c)claims to money utilized for the purpose of creating an economic value or to any performance having an economic value;
(d)copyrights, industrial property rights, technical process, know-how, trademarks and trade names;
(e)business concessions conferred by law or under contract, including concessions to search for, extract or exploit natural resources.

Any admitted alternation of the form in which assets are investd shall not affect their classification as an investment.

(2) The term "returns" means the amounts yielded by an investment for a definite period of time as profits, interests, capital gains, dividends, royalties, fees and other legitimate returns.

(3) The term "investor" means every physical or legal person as well as any other cooperation including interest associations, which is recognised as a resident by the legislations and regulations in force, making investments in the territory of the other Contracting Party.

(4) The term "territory" means the territory over which the Contracting Party has sovereignty of jurisdiction according to international law and its laws and regulations.

Article 3

1. Each Contracting Party shall in its territory accord investments or returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State, whichever is more favourable.

2. Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments treatment not less favourable than that which it accords to its own investors or to investors of any third Sate, whichever is more favourable.

3. The treatment mentioned above shall not apply to any advantage accorded to investors of a third State by either Contracting Party based on the membership of that Contracting Party in a customs union, common market, free trade zone, economic multilateral international agreement or based on an agreement concluded between that Contracting Party and a third State on avoidance of double taxation, or for facilitation of frontier trade.

Article 4

1. Investments or returns 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 the public interest, and against prompt, adequate and effective compensation, provided that such measures are taken on a non-discriminatory basis and in accordance with law.

2. Such compensation shall amount to the market value of the investment or returns expropriated immediately before the expropriation or impendin expropriation become public knowledge, shall be made without undue delay, be effectively realizable and be freely transferable.

3. Such compensation shall include interest from the date of expropriation until the date of payment.

Article 5

Investors of either Contracting Party hose investments suffer losses in the territory of the other Contracting Party owing to war, other armed conflicts or to other incidents considered as such by international law, shall be accorded by the latter Contracting Party treatment no less favourable than that which this Party accords to its own investors or to investors of any third State as regards restitution, indemnification or compensation. Resulting payments shall e freely transferable.

Article 6

Each Contracting Party shall, within the scope of its laws and regulations, ensure the free transfer of the property made as an investment in its territory by investors of the other Contracting Party, which is as follows:
(a) returns including reinvested returns;
(b) royalties deriving from incorporeal rights as defined in letter 9d) and (e) of paragraph (1), Article 2;
(c) instalments in repayment of loans aiming at direct participation in the investments;
(d) amounts spent for the management of the investments in the territory of the other Contracting Party;
(e) additional funds necessary for the maintenance of the investment in the territory of either Contracting Party;
(f) the value of partial or total assignment and/or liquidation of the investment, including liquation effected as a result of any event mentioned in Article 5.
People working in the territory of the other Contracting Party because of an investment made by the other Contracting Party will be permitted to transfer to their own country all the remaining part of their salary after payment of taxes and deduction of their

living expenses spent therein.

Article 7

In case one Contracting Party has granted any guarantee against non-commercial risks in respect of an investment by its investor in the territory of the other Contracting Party and as made payment to such investor under the guarantee, the other Contracting Party shall recognize the transfer of the rights of such investor to the one Contracting Party and the subrogation of the one Contracting Party shall not exceed the original rights of such investor. As regards the transfer of payments to be made to the Contracting Party by virtue of such subrogation, Article 4, 5 and 6 shall apply respectively.

Article 8

Transfers as stipulated in Article 4, 5, 6 and 7 shall be made without undue delay, according to international financial custom, after the performance of the fiscal burdens. Such transfers shall be made in convertible currency at the official rate of exchange existing on the date the transfer is made.

Article 9

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.

Article 10

1. All kinds of disputes or differences, including disputes over the amount of compensation for expropriation, nationalisation or similar measures, between one Contracting Party and an investor of the other Contracting Party concerning an investment of that investor in the territory of the one Contracting Party shall be settled amicably through negotiations.

2. If such disputes or differences cannot be settled according to the provisions of paragraph 1 of this Article within six months from the date of request for settlement, the investor concerned may submit the dispute to:
(a) the competent court of the Contracting Party for decision; or
(b) the International Center for Settlement of Investment Disputes under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, of March 18, 1965 done in Washing D.C. for conciliation or arbitration.

3. Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and a Contracting Party has failed to abide by or comply with the award rendered by the International Center for Settlement of Investment Disputes.

Article 11

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall be settled as far as possible, through friendly consultation by both Parties through diplomatic channels.

2. If such disputes cannot be settled within six months from the date on which either Contracting Party informs in writing the other Contracting Party, they shall, at the request of either Contracting Party, be submitted for settlement to an ad hoc international arbitral tribunal.

3. The ad hoc international arbitral tribunal mentioned above shall be established as follows:

The arbitral tribunal is composed of three arbitrators. Each Contracting Party shall appoint one arbitrator; the two arbitrators propose by mutual agreement the third arbitrator who is a national of a third arbitrator who is a national of a third State which has diplomatic relations with both Contracting Parties, and the third arbitrator will be appointed as the chairman of the tribunal by both Contracting Parties.

4. If the appointments of the members of the arbitral tribunal are not made within a period of six months from the date of request for arbitration, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments. Should the President be a national of one Contracting Party, or should he not be able to perform this designation because of other reasons, this task shall be entrusted to the Vice-President of the Court, or to the next senior judge of the Court who is not a national of either Contracting Party.

5. The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall decide its award by a majority of votes. Such award is final and binding upon the two Contracting Parties.

6. 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.

Article 12

The provisions of the present Agreement shall apply irrespective or the existence of diplomatic or consular relations between the two Contracting Parties.

Article 13

The provisions of this Agreement shall also apply to the investments previously made in the territory of each Contracting Party according to its laws and regulations.

Article 14

1. The present Agreement shall enter into force three months after the notification between the Contracting Parties of the accomplishment of their respective internal procedures for the entry into force of the Agreement. It shall remain in force for a period of ten years and shall continue in force thereafter for another period of five years and so forth unless denounced in writing by either Contracting Party one year before its expiration.

2. In respect of investments made prior to the date of termination of the present Agreement, its provisions shall continue to be effective for a further period of five years from the date of termination of the present Agreement.

DONE in duplicate at Seoul on 10th January 1989, in the Korean, Italian and English languages, all texts being equally authentic. In case of any divergency of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF
THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF
THE REPUBLIC OF ITALY