AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA CONCERNING THE PROMOTION AND PROTECTION OF INVESTMENT

Signed at Jakarta February 16, 1991
Entered into force March 10, 1994

The Government of the Republic of Korea and the Government of the Republic of Indonesia (hereinafter referred to as "Parties");

Bearing in mind the friendly and cooperative relations existing between the two countries and their peoples;

Intending to create favourable conditions for investments by investors of one Party in the territory of the other Party on the basis of sovereign equality and mutual benefit; and

Recognizing that the promotion and protection of such investments will be conducive to the stimulation of individual business initiative and to foster prosperity in both countries;

Have agreed as follows:

Article l
Definitions

For the purpose of this Agreement:

(1) "Investments" means every kind of asset invested by investors, including but not exclusively:
(a) movable and immovable property and any other property rights such as mortgages, liens or pledges;
(b) shares, stocks and debentures of companies wherever incorporated or interests in the property of such companies;
(c) claims to money or to any performance related to investment having a financial value;
(d) intellectual property rights including copyright, commercial trademark, patents, industrial designs, know-how, trade secrets and trade names, and goodwill;
(e) business concessions conferred by law or under contract related to investment including concessions to search for, cultivate, extract or exploit natural resources.

(2) "Investors" means nationals or companies of a Party who effected or are effecting investments in the territory of the other Party.

(3) "Nationals" means:
(a) with respect to the Republic of Korea, physical persons who are deemed to be nationals of the Republic of Korea in accordance with its laws;
(b) with respect to the Republic of Indonesia, persons who, according to the laws of the Republic of Indonesia, are Indonesian nationals.

(4) "Companies" means:
(a) with respect to the Republic of Korea, juridical persons or companies or associations, whether or not with limited liability and whether or not for pecuniary profit, incorporated in the territory of the Republic of Korea and existing in accordance with its laws;
(b) with respect to the Republic of Indonesia, any company with a limited liability incorporated in the territory of the Republic of Indonesia, or any juridical person constituted in accordance with its laws.

(5) "Returns" or "Incomes" means the amount yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties or fees.

(6) "Territory" means:
(a) in respect of the Republic of Korea, the territory of the Republic of Korea as defined in its laws and parts of the continental shelf and adjacent seas, over which the Republic of Korea has sovereignty, sovereign rights or other rights in accordance with international law.
(b) in respect of the Republic of Indonesia, the territory of the Republic of Indonesia as defined in its laws and parts of the continental shelf and adjacent seas, over which the Republic of Indonesia has sovereignty, sovereign rights or other rights in accordance with international law.

Article 2
Promotion and Protection of Investment

(1) Either Party shall encourage and create favourable conditions for investors of the other Party to invest in its territory, and shall admit such capital in accordance with its laws and regulations.

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

Article 3
Scope of the Agreement

This Agreement shall apply to investments by investors of the Republic of Korea in the territory of the Republic of Indonesia which have been granted admission in accordance with Law No. l of l967 on Foreign Capital Investment and any law amending or replacing it, and to investments by investors of the Republic of Indonesia in the territory of the Republic of Korea which have been granted admission in accordance with the Foreign Capital Inducement Act as amended on December l983 and any law amending or replacing it both at or after the entry into force of this Agreement.

Article 4
Treatment

(l) Neither Party shall in its territory subject investments effected by, and income accruing to, investors of the other Party to treatment less favourable than that which it accords to investments effected by, and income accruing to, investors of any third State.

(2) Neither Party shall in its territory subject investors of the other Party, as regards their management, use, enjoyment or disposal of their investment, as well as to any activity connected with these investments, to treatment less favourable than that which it accords to investors of any third State.

(3) Notwithstanding preceding paragraphs, investments made by investors of one Party in the territory of the other Party shall be accorded fair and equitable treatment not less favourable than that which the latter Party accords to its own nationals or companies according to its applicable laws and regulations.

(4) The treatment mentioned above shall not apply to any advantage or privilege accorded to investors of a third State by either Party based on the membership of that Party in a customs union, common market, free trade zone, multilateral economic agreement or based on an agreement concluded between that Party and a third State on avoidance of double taxation or based on crossborder trade arrangement.

Article 5
Compensation for Damages and Losses

Investors of one Party, whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Party, shall be accorded by the latter Party, as regards restitution, indemnification, compensation or other settlement, treatment no less favourable than that which the latter Party accords to its own nationals or companies or to investors of any third State.

Article 6
Expropriation

(1) Investments of investors of either Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Party except for a public purpose related to the internal needs of the expropriating Party and against full, prompt and effective compensation. Such compensation, including interest from the date of expropriation, shall amount to the market value of the investment expropriated prior to the moment in which the decision to expropriate is announced or made public. Compensation shall be made without undue delay, effectively realizable and freely transferable. The legality of any expropriation and its procedures, the amount and the method of payment of compensation shall be subject to review by due process of law in accordance with the existing laws and regulations of the expropriating Party.

(2) Where a Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its territory, and in which nationals or companies of the other Party own shares, it shall ensure that the provisions of paragraph (l) of this Article are applied to the extent necessary to guarantee compensation provided for in that paragraph to the owners of those shares.

Article 7
Repatriation of Investment

(l) Each Party shall within the scope of its laws and regulations in respect to investments by investors of the other Party grant to those investors without unreasonable delay and after they have complied with all their tax obligations, the transfer of:
(a) capital and additional capital amounts used to maintain and increase investments;
(b) net operating profits including dividends and interests in proportion to the share-holding of the foreign participant;
(c) repayment of any loan and the relevant interest thereof, as far as it is related to the investment;
(d) payment of royalties and services fees as far as it is related to the investment;
(e) proceeds from sales of shares owned by the foreign share holders;
(f) compensation for damages or losses;
(g) compensation for expropriation;
(h) proceeds received by investor in case of liquidation;
(i) the earnings of nationals of one Party who are allowed to work in connection with investment in the territory of the other Party.

(2) To the extent an investor of either Party has not made another arrangement with the appropriate authorities of the other Party in whose territory the investment of such investor is situated, currency transfer made pursuant to paragraph l of this Article shall be permitted in the currency of this original investment or in any other freely convertible currency. Such transfer shall be made at the prevailing rate of exchange of the date of transfer with respect to current transactions in the currency to be transferred.

(3) Notwithstanding the preceding paragraphs, either Party may maintain laws and regulations requiring reports of currency transfers.

Article 8

Subrogation

In case one Party or its designated agency has granted any guarantee against non-commercial risks in respect of an investment by its investor in the territory of the other Party and has made payment to such investor under that guarantee, the other Party shall recognize the transfer of the rights of such investor to the former Party or any of its designated agency. The subrogation of the latter shall not exceed the original rights of such investor. As regards the transfer of payments to be made to the other Party by virtue of such subrogation, Articles 6 and 7 shall apply respectively.

Article 9
Settlement of Disputes between Investors and the Parties

(l) Any dispute arising between a Party and the investor of the other shall be settled amicably.

(2) In the event that such a dispute cannot be settled within twelve months between the parties to the dispute through pursuit of local remedies, then the investor affected may submit the dispute to the "International Center for the Settlement of Investment Disputes", for the application of the arbitration procedures provided by the Washington Convention of l8th March l965 on the "Settlement of Investment Disputes between States and Nationals of other States".

Article l0
Settlement of Dispute between the Parties Concerning Interpretation and Application of the Agreement

(l) Disputes concerning the interpretation or implementation of this Agreement shall be settled amicably through diplomatic negotiation between the Parties.

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

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two 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, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either 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 Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decisions by a majority of votes. Such decision shall be binding on both Parties. Each Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Parties. The tribunal may, however, in its decision direct that a higher proportion of cost shall be borne by one of the two Parties, and this award shall be binding on both Parties. The tribunal shall determine its own procedure.

Article 11
Application of other Provisions

Whenever any issue is governed by this Agreement and by any other Agreement to which both are parties, more favourable provisions shall be applied

to the investors.

Article l2
Entry into Force, Duration and Termination

(l) This Agreement shall enter into force on the date when the Parties notify each other that all legal requirements for its entry into force have been fulfilled.

(2) This Agreement shall remain in force for a period of ten years and shall continue in force thereafter for another period of ten years and so forth unless either Party notifies in writing of its intention to terminated this Agreement one year before its expiration.

(3) This Agreement may be revised by mutual consent. Any revision or termination of this Agreement shall be effected without prejudice to any right or obligation accruing or incurred under this Agreement prior to the effective date of such revision or termination.

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

DONE in duplicate at Jakarta this sixteenth day of February, l99l in the Korean, Indonesian and English languages, all texts being equally authentic. In case of divergence of interpretation of this Agreement, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA
/Sgd./ Kim Jae-choon

FOR THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
/Sgd./ Ali Alatas