

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE KINGDOM OF SAUDI ARABIA CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS**

The Government of the Republic of Korea and the Government of the Kingdom of Saudi Arabia (hereinafter referred to as the "Contracting Parties"),

Desiring to intensify economic cooperation between both States,

Intending to create favourable conditions for investments by investors of either State in the territory of the other State,

Recognizing that the reciprocal promotion and protection of such investments will stimulate private business initiative and increase the prosperity of both States,

Have agreed as follows:

## **ARTICLE 1**

For the purposes of this Agreement:

(1) the term "investment" means any kind of asset, owned or controlled by an investor of a Contracting Party in the territory of the other Contracting Party according to its laws and regulations and in particular, but not exclusively includes:

- (a) movable and immovable property as well as any other rights *in rem*, such as mortgages, leases, liens, pledges, usufructs and similar rights;
- (b) shares, stocks and debentures of companies and other kinds of rights or interests in companies as well as securities issued by a Contracting Party or any of its investors;
- (c) claims to money such as loans or to any performance having an economic value, associated with an investment;
- (d) intellectual property rights, including but not limited to copy rights, patents, industrial designs, technical processes, know-how, trademarks, trade and business secrets, trade names and good-will;
- (e) any right conferred by law or under public contract or any licenses, permits or concessions issued according to law;

any alteration of the form in which assets are invested or reinvested shall not affect their classification as investment, provided that such alternation is not in conflict with the legislation of the Contracting Party in whose territory the investment is made.

(2) the term "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, dividends, royalties, capital gains or any similar fees or payments.

(3) the term "investor" means;

(a) in respect of the Republic of Korea:

- ( i ) natural persons having the nationality of the Republic of Korea in accordance with its laws;

(ii) any entity incorporated or constituted in accordance with, and recognized as a juridical entity by its laws, such as public institutions, corporations, foundations, companies, partnerships and associations irrespective of whether their liabilities are limited or otherwise, and whether or not organized for pecuniary profit.

(b) in respect of the Kingdom of Saudi Arabia:

(i) natural persons possessing the nationality of the Kingdom of Saudi Arabia in accordance with the law of the Kingdom of Saudi Arabia;

(ii) any entity having or having no legal personality and constituted in accordance with the laws of the Kingdom of Saudi Arabia and having its head office in its territory such as corporations, enterprises, cooperatives, companies, partnerships, offices, establishments, funds organizations, business associations and other similar entities irrespective of whether or not they are of limited liability;

(iii) its public financial institutions, official agencies and authorities such as the Saudi Arabian Monetary Agency, public funds and other similar public institutions existing in Saudi Arabia.

(4) This Agreement shall also apply to the areas of the exclusive economic zone and the continental shelf insofar as international law permits the Contracting Party concerned to exercise sovereign rights or jurisdiction in these areas.

## **ARTICLE 2**

(1) Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations. It shall in any case accord such investments fair and equitable treatment.

(2) Investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party. Each Contracting Party shall not in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.

## **ARTICLE 3**

(1) Each Contracting Party shall grant investments once admitted and investment returns of the investors of the other Contracting Party a treatment not less favourable than that accorded to investments and investment returns of investors of any third state.

(2) In accordance with its laws and regulations, each Contracting Party shall grant investments once admitted and investment returns of the investors of the other Contracting Party a treatment not less favourable than that accorded to investments and investment returns of its investors.

(3) Each Contracting Party shall accord to the investors of the other Contracting Party in connection with the management, maintenance, use, enjoyment or disposal of investments or with the means to assure their rights to such investments, like transfers and indemnification or with any other activity associated with this in its territory, treatment not less favourable than the treatment it accords to its investors or to the investors of any third state, whichever is more favourable.

(4) The provisions in paragraph (1), (2) and (3) of this Article shall not, however, relate to privileges granted by either Contracting Party to the investors of a third state by virtue of its membership of, or association with, a customs union, an economic union, a common market or a free trade area.

(5) The treatment granted under this Article shall not relate to advantages which either Contracting Party accords to investors of a third state by virtue of a double taxation agreement or other agreements regarding matters of taxation.

#### **ARTICLE 4**

(1) Investments by investors of either Contracting Party shall not be expropriated, nationalized or subjected to any other measure, the effects of which would be tantamount to expropriation or nationalization (hereinafter referred to as "expropriation") by the other Contracting Party except for the public benefit of that Contracting Party and against prompt, adequate and effective compensation, provided that these measures are in accordance with domestic laws of general application and are not discriminatory. Such compensation shall be equivalent to the market value of the expropriated investment immediately before the date on which expropriation has taken place or has become publicly known, whichever is earlier. The compensation shall be paid without delay and shall carry a rate of return determined on the basis of the market prevailing rate of return from the date of expropriation until the time of payment; it shall be effectively realizable and freely transferable. Provision shall have been made in an appropriate manner at or prior to the time of expropriation for the determination and payment of such compensation. The legality of any such expropriation and the amount of compensation shall be subject to review by due process of law.

(2) Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of general emergency, revolt, or requisitioning or destruction of their property by its forces or authorities which was not caused in combat action shall be accorded treatment not less favourable than that which such Contracting Party accords to its investors in accordance with its laws and regulations or to the investors of any third state as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable without delay.

#### **ARTICLE 5**

Each Contracting Party shall guarantee to investors of the other Contracting Party, after all tax obligations have been met, the free transfer of payments in connection with investments and investment returns they hold in the territory of the latter Contracting Party. Such transfers shall include, in particular, though not exclusively:

- (a) the principal and additional amounts to maintain or increase the investment;
- (b) the returns;
- (c) the repayment of loans;
- (d) the proceeds from the liquidation or the sale of the whole or any part of the investment;
- (e) the remuneration and allowances of the nationals of the other Contracting Party working in a form associated with investment in the territory of each Contracting Party;
- (f) the compensation provided for in Article 4.

#### **ARTICLE 6**

If a Contracting Party or any related agency makes a payment to an investor under a guarantee it has assumed in respect of an investment made by that investor in the territory of the other Contracting Party, the latter Contracting Party shall recognize the transfer of any rights or claim from the investor or any of its affiliates to the former Contracting Party or any related agency.

#### **ARTICLE 7**

(1) Transfers under paragraphs (1) or (2) of Article 4, Article 5 or Article 6 shall be made without delay at the prevailing rate of exchange in freely convertible currency which is widely used to make payments for international transactions and widely exchanged in principal international exchange markets.

(2) This rate of exchange shall be market rate of exchange prevailing on the date of application for transfer or the exchange rate for conversion of currencies into Special Drawing Rights on the date of application for transfer, whichever is more favourable to the investors.

#### **ARTICLE 8**

(1) If the treatment accorded by either Contracting Party, according to its laws, regulations or international agreements to which both Contracting Parties are parties, to investments or activities in connection with investments made by investors of the other Contracting Party is more favourable than that provided for in this Agreement, the more favourable treatment shall be accorded.

(2) Each 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 9**

This Agreement shall also apply to investments made in accordance with the laws and regulations of either Contracting Parties prior to its entry into force by investors of either Contracting Party in the territory of the other Contracting Party.

#### **ARTICLE 10**

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should as far as possible be settled by the two Contracting Parties.

(2) If a dispute cannot thus be settled within six (6) months, it shall upon the request of either Contracting Party be submitted to an arbitration tribunal.

(3) Such arbitration tribunal shall be constituted *ad hoc* as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third state as their Chairman to be appointed by the two Contracting Parties. Such members shall be appointed within two (2) months, and such Chairman within three (3) months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.

(4) If the periods specified in paragraph (3) of this Article have not been observed, 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. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the Vice President should make the necessary appointments. If the Vice President is 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 should make the necessary appointments.

(5) The arbitration tribunal shall reach its decisions by a majority of votes. Such decisions shall be final and binding. Each

Contracting Party shall bear the cost of its own member and the cost counselling in the arbitration proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitration tribunal may make a different regulation concerning costs. In all other respects, the arbitration tribunal shall determine its own procedure.

#### **ARTICLE 11**

(1) Disputes concerning investments between a Contracting Party and an investor of the other Contracting Party should be amicably settled as far as possible.

(2) If the dispute cannot be settled in the way prescribed in paragraph (1) of this Article within six (6) months from the date when the request for the settlement was submitted, it shall at the request of the investor be filed with the competent court of law of the Contracting Party in whose territory the investment was made, or filed for arbitration under the Convention of 18th March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States.

(3) If the dispute is submitted in accordance with paragraph (2) to the competent court of the Contracting Party, the investor cannot at the same time seek international arbitration. If the dispute is filed for arbitration, the award shall be binding and shall not be subject to any appeal or remedy other than those provided for in the said Convention. The award shall be enforced in accordance with domestic law.

#### **ARTICLE 12**

This Agreement shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

#### **ARTICLE 13**

(1) This Agreement shall enter into force thirty (30) days after the date when the Contracting Parties notify each other that all legal requirements for its entry into force have been fulfilled. It shall remain in force for period of ten (10) years and shall remain in force thereafter for an unlimited period unless denounced in writing by either Contracting Party twelve (12) months before its expiration. After the expiry of the period of ten (10) years, this Agreement may be denounced at any time by either Contracting Party giving twelve (12) months' notice.

(2) In respect of investments made prior to the date of termination of this Agreement, the provisions of Article 1 to 12 shall continue to be effective for a further period of twenty (20) years from the date of termination of this Agreement.

IN WITNESS WHEREOF, the representatives of both Governments, duly authorized, have signed this Agreement.

DONE at Seoul on this 4th day of April 2002, in duplicate in the Korean, Arabic and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF THE KINGDOM OF SAUDI ARABIA