

AGREEMENT ON THE PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE KINGDOM OF MOROCCO

Signed at Rabat January 27, 1999

Entered into force May 8, 2001

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

Desiring to create favorable conditions for greater economic cooperation between them, and in particular for investments by investors of one Contracting Party in the territory of the other Contracting Party, and

Recognizing that the encouragement and reciprocal protection of such investments will be conducive to the stimulation of business initiative and will increase prosperity in the two countries,

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes 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 in accordance with the laws and regulations of the latter Contracting Party. Without restricting the generality of the foregoing, the term "investment" shall include, in particular, though not exclusively:

(a) Movable and immovable property as well as any other related property rights such as mortgages, liens, pledges, usufruct, leases and similar rights;

(b) Shares, stocks and debentures of companies 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 good will;

(e) Any rights conferred by laws or under contracts, relating to an investment and any licenses and permits, including the concessions to search for, cultivate, extract and 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) A "natural person" means with respect to either Contracting Party a natural person having the nationality of that Contracting Party in accordance with its laws; and

(b) A "juridical person" means with respect to either Contracting Party, any entity established in accordance with, and recognized as a juridical person by its laws such as public institutions, corporations, foundations, private companies, firms, establishments and organizations.

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

(4) The term "territory" means:

(a) In respect of the Republic of Korea: the territory of the Republic of Korea as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea over which the Republic of Korea exercises, in accordance with international law, sovereign rights or jurisdiction for the purpose of exploration and exploitation of the natural resources of such areas.

(b) In respect of the Kingdom of Morocco: the territory of the Kingdom of Morocco, including any maritime area situated beyond the territorial waters of the Kingdom of Morocco which has been or might in the future be designed by the laws of the Kingdom of Morocco in accordance with international law as an area within which the Kingdom of Morocco may exercise rights with regard to the sea-bed and subsoil and the natural resources.

(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 and create favourable conditions for investors of the other Contracting Party to invest in its territory and shall admit such investments in accordance with its laws and regulations.

(2) Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

(3) Each Contracting Party shall observe any obligation it may have entered into consistently with this Agreement with regard to investments in its territory by investors of the other Contracting Party.

ARTICLE 3

Investment Treatment

(1) Investments of investors of one Contracting Party in the territory of the other Contracting Party and also the returns therefrom shall receive treatment which is fair and equitable and not less favourable than that accorded in respect of the investments of its own investors or those of any third State.

(2) Each Contracting Party in its territory accords to investors of the other Contracting Party as regards the 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 its own investors or to investors of any third State.

(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 which may be extended by the former Contracting Party by virtue of:

- (a) Any existing or future customs union or free trade area, a common external tariff area, a common market, a monetary union or similar international agreements or other forms of regional cooperation to which either Contracting Party is or may become a party; or
- (b) Any existing or future conventions or other international arrangements relating wholly or mainly to taxation.

ARTICLE 4

Compensation for Losses

(1) Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war, armed conflicts, revolution, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlements, treatment which is not less favourable than that which the latter Contracting Party grants to its own investors or to investors of any third State. Any payments under this Article shall be prompt, adequate, effective and freely transferable.

(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 damage or loss 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 which was not caused in combat action or was not required by the necessity of the situation,
- shall be accorded just and adequate compensation for the damage or loss sustained during the period of requisitioning or as a result of the destruction of the property. Resulting payments shall be freely transferable and without undue delay.

ARTICLE 5

Nationalization and Expropriation

(1) Investments of investors of either Contracting Party shall not be nationalized,

expropriated or otherwise subjected to any other similar measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for reasons of public interest under due process of law, on a non-discriminatory basis, and provided that it is accompanied by prompt, adequate and effective compensation.

(2) Such compensation shall amount to the market value of the investment expropriated immediately before expropriation was taken or before impending expropriation became public knowledge, whichever is the earlier, shall include interest at the applicable commercial rate, and shall be made without undue delay, be effectively realizable and be freely transferable.

(3) The investor of the Contracting Party shall have a right to a prompt review by a judicial body of the other Contracting Party, of the valuation of his or its investments in accordance with the principles set out in this Article.

(4) 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 this Article shall be applied.

ARTICLE 6

Transfers

(1) With regard to the investments made in its territory, each Contracting Party shall grant to investors of the other Contracting Party the right to freely transfer payments related to their investments and returns. Such transfers shall include in particular, though not exclusively, the followings:

- (a) Investment returns, as defined in Article 1;
- (b) Compensation and other indemnities pursuant to Articles 4 and 5;
- (c) Proceeds accruing from the sale or the liquidation, in full or partial of an investment;
- (d) Funds in repayment of loans related to investments;
- (e) Additional funds necessary for the maintenance or development of an existing investment;
- (f) Earnings of nationals of the other Contracting Party who are allowed to work in connection with investments in its territory.

(2) The transfers shall be made in a freely convertible currency, without undue delay at the exchange rate which is effective for the current transaction.

ARTICLE 7

Subrogation

If a Contracting Party or its designated agency makes a payment to its own investors under a guarantee against non-commercial risks it has accorded 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 country, of any rights or claims from the investor 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 such claims of that investor and shall assume the obligation related to the investment.

ARTICLE 8

Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

(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 disputes cannot be settled in the way prescribed in paragraph (1) of this Article within six months from the date of the request for the settlement has been submitted, it shall be, at the request of the investor, filed to the competent Court of Law of the Contracting Party in whose territory the investment was made, or filed for arbitration of the International Center for Settlement of Investment Disputes (hereinafter referred to as "ICSID") set up by the Convention of 18th March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States.

(3) The award made by the competent Court of Law of the Contracting Party or by ICSID shall be final and binding on the parties to dispute. Each Contracting Party shall ensure the recognition and enforcement of the award in accordance with its relevant laws and regulations.

ARTICLE 9

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 through negotiations between the Contracting Parties.

(2) If the dispute cannot thus be settled within six months from the start of the negotiations, 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 months of the 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, who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within three 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 he happens to be a national of either Contracting Party or 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 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 determine its own procedure and shall reach its decision by a majority of votes on the basis of the provisions of this Agreement and the principles and rules of international law. Such decision shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own arbitrator and 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 10

Application of other Rules

(1) Where a matter is governed simultaneously 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) Without prejudice to the provisions of this Agreement, 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 11

Application of the Agreement

(1) This Agreement shall apply to all investments, whether made before or after its entry into force.

(2) Notwithstanding paragraph (1) of this Article, this Agreement shall not apply to the investments which were made in local currency before its entry into force.

(3) Notwithstanding paragraph (1) of this Article, this Agreement shall not apply to disputes existing before its entry into force.

ARTICLE 12

Entry into Force

This Agreement shall enter into force on the date of exchanging the written notification by both Contracting Parties indicating that their respective internal legal procedures have been fulfilled.

ARTICLE 13

Duration and Termination

(1) This Agreement shall remain into force for a period of fifteen years and shall continue in force thereafter for another similar period, or periods unless one of the Contracting Parties notifies the other Contracting Party in writing of its intention to terminate this Agreement, at least twelve months prior to the expiration of that period.

(2) With respect to investments made prior to the date of termination of this Agreement, the provisions of this Agreement shall remain in force for a further period of fifteen years from the date of termination.

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

Done in duplicate at Rabat on the 27th day of January 1999, in the Korean, Arabic 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 KINGDOM OF MOROCCO