Treaty Series

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Recueil des Traités

Traités et accords internationaux enregistrés ou classés et inscrits au répertoire au Secrétariat de l'Organisation des Nations Unies

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NOTE BY THE SECRETARIAT

Under Article 102 of the Charter of the United Nations, every treaty and every international agreement entered into by any Member of the United Nations after the coming into force of the Charter shall, as soon as possible, be registered with the Secretariat and published by it. Furthermore, no party to a treaty or international agreement subject to registration which has not been registered may invoke that treaty or agreement before any organ of the United Nations. The General Assembly, by resolution 97 (I), established regulations to give effect to Article 102 of the Charter (see text of the regulations, vol. 859, p. VIII; https://treaties.un.org/doc/source/publications/practice/registration_and_publication.pdf).

The terms "treaty" and "international agreement" have not been defined either in the Charter or in the regulations, and the Secretariat follows the principle that it acts in accordance with the position of the Member State submitting an instrument for registration that, so far as that party is concerned, the instrument is a treaty or an international agreement within the meaning of Article 102. Registration of an instrument submitted by a Member State, therefore, does not imply a judgement by the Secretariat on the nature of the instrument, the status of a party or any similar question. It is the understanding of the Secretariat that its acceptance for registration of an instrument does not confer on the instrument the status of a treaty or an international agreement if it does not already have that status, and does not confer upon a party a status which it would not otherwise have.

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NOTE DU SECRÉTARIAT

Aux termes de l'Article 102 de la Charte des Nations Unies, tout traité ou accord international conclu par un Membre des Nations Unies après l'entrée en vigueur de la Charte sera, le plus tôt possible, enregistré au Secrétariat et publié par lui. De plus, aucune partie à un traité ou accord international qui aurait dû être enregistré mais ne l'a pas été ne pourra invoquer ledit traité ou accord devant un organe de l'Organisation des Nations Unies. Par sa résolution 97 (I), l'Assemblée générale a adopté un règlement destiné à mettre en application l'Article 102 de la Charte (voir texte du règlement, vol. 859, p. IX; https://treaties.un.org/doc/source/publications/practice/registration_and_publication-fr.pdf).

Les termes « traité » et « accord international » n'ont été définis ni dans la Charte ni dans le règlement, et le Secrétariat a pris comme principe de s'en tenir à la position adoptée à cet égard par l'État Membre qui a présenté l'instrument à l'enregistrement, à savoir que, en ce qui concerne cette partie, l'instrument constitue un traité ou un accord international au sens de l'Article 102. Il s'ensuit que l'enregistrement d'un instrument présenté par un État Membre n'implique, de la part du Secrétariat, aucun jugement sur la nature de l'instrument, le statut d'une partie ou toute autre question similaire. Le Secrétariat considère donc que son acceptation pour enregistrement d'un instrument ne confère pas audit instrument la qualité de traité ou d'accord international si ce dernier ne l'a pas déjà, et qu'il ne confère pas à une partie un statut que, par ailleurs, elle ne posséderait pas.

*

* *

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I

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No. 49666

Republic of Korea
and
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Exchange of notes between the Government of the Republic of Korea and the Government of Canada constituting an Agreement relating to the transfer of tritium items for the Wolsong Tritium Removal Facility. Seoul, 17 January 2001 and 19 January 2001

Entry into force: *19 January 2001 by the exchange of the said notes*

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République de Corée
et
Canada

Échange de notes entre le Gouvernement de la République de Corée et le Gouvernement du Canada constituant un accord relatif au transfert d'articles de tritium pour l'installation d'élimination du tritium de Wolsong. Séoul, 17 janvier 2001 et 19 janvier 2001

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Textes authentiques : *anglais, français et coréen*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 6 juillet 2012*

[ENGLISH TEXT – TEXTE ANGLAIS]

I

EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF CANADA CONSTITUTING AN AGREEMENT RELATING TO THE TRANSFER OF TRITIUM ITEMS FOR THE WOLSONG TRITIUM REMOVAL FACILITY

Seoul, 17 January 2001

Excellency:

I have the honour to refer to the history of cooperation between the Republic of Korea and Canada for the development and application of atomic energy for peaceful purposes and to the common desire of Canada and the Republic of Korea to pursue cooperation with respect to the transfer of tritium items for the Wolsong Tritium Removal Facility.

This relates to a decision by the Republic of Korea to construct a tritium removal facility on the Wolsong site to extract tritium which builds up in the heavy water moderator and coolant in the Wolsong CANDU nuclear power reactors and Canada's desire to cooperate with the Republic of Korea in that project.

Tritium items do not come within the purview of the Agreement Between the Government of Canada and the Government of the Republic of Korea for Cooperation in the Development and Application of Atomic Energy for Peaceful Purposes (NCA), signed on 26 January 1976. This Note sets out the basis of an Agreement for the application of nuclear non-proliferation assurances to "tritium", "tritium facilities or plants and equipment therefor" and "tritium information" transferred from Canada to Korea; any replicas of "tritium facilities or plants and equipment therefor"; "tritium facilities or plants and equipment therefor" which our Governments agree have been constructed on the basis of "tritium information" supplied subject to this Note; tritium processed or extracted with such "tritium facilities or plants and equipment therefor"; and heavy water not already subject to the Canada-Korea NCA which is processed with "tritium facilities or plants and equipment therefor" subject to this Note.

His Excellency
Mr. Lee Joung-binn
Minister of Foreign Affairs and Trade
of the Republic of Korea

In this respect, I have the honour to propose the following:

I For the purpose of this Note:

1. "Tritium" is defined as "tritium, tritium compounds, mixtures containing tritium in which the ratio of tritium to hydrogen atoms exceeds 1 part in 1000, and products or devices containing any of the foregoing, excluding a product or device containing less than 1.48×10^3 gigabecquerels (GBq) tritium";

2. "Tritium facilities or plants and equipment therefor" are defined as:

   "a. facilities or plants for the production, recovery, extraction, concentration or handling of tritium;

   b. equipment for tritium facilities or plants, as follows:

      (i) hydrogen or helium refrigeration units capable of cooling to 23 K (-250 °C) or less, with heat removal capacity greater than 150 W;

      (ii) hydrogen isotope storage or purification systems using metal hydrides as the storage or purification medium;

   c. platinized catalysts specially designed or prepared for promoting the hydrogen isotope exchange reaction between hydrogen and water for the recovery of tritium from heavy water or for the production of heavy water".

3. "Tritium information" is defined as "technical data in physical form including but not limited to: technical drawings, photographic negatives and prints, recordings, design data, and technical and operating manuals that can be used in the design, production, operation or testing of 'tritium facilities or plants and equipment therefor', except data available to the public, i.e., in published books and periodicals, and which the Government of Canada has informed the Government of the Republic of Korea is to be regarded as information for the purposes of this Note".

II "Tritium", "tritium facilities or plants and equipment therefor", "tritium information" and heavy water subject to this Note:

1. shall be used for peaceful purposes only, and, in particular, shall not be used for the development, manufacture, or acquisition or detonation of nuclear weapons or other nuclear explosive devices;

2. shall not be transferred beyond the jurisdiction of the Government of the Republic of Korea without the prior written consent of the Government of Canada;

3. shall be subject to appropriate measures of physical protection in order to prevent against unauthorized removal.

III Administrative procedures shall be established jointly by the Canadian Nuclear Safety Commission and the Korean Ministry of Science and Technology to facilitate the implementation of this Note. These procedures shall include prior and post notifications of items transferred and retransferred subject to this Note, an annual inventory report of items that are subject to this Note, and, as appropriate, site visits.

IV The provisions of this Note shall not be used for the purpose of securing commercial advantage.

V Our Governments shall consult annually or at the request of either Government to ensure the effective implementation of this Note.

If the foregoing is acceptable to the Government of the Republic of Korea, I have the honour to propose that this Note, which is equally authentic in English and French, together with Your Excellency's reply to that effect, shall constitute an agreement between our two Governments which shall enter into force on the date of Your Excellency's reply to this Note and shall remain in force as long as any items referred to in this Note remain in existence and may be amended or terminated by written agreement.

Please accept, Excellency, the assurance of my highest consideration.

Arthur C. Perron
Ambassador
Extraordinary and Plenipotentiary
of Canada to the Republic of Korea

[FRENCH TEXT – TEXTE FRANÇAIS]

I

ÉCHANGE DE NOTES ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE DE CORÉE ET LE GOUVERNEMENT DU CANADA CONSTITUANT UN ACCORD RELATIF AU TRANSFERT D'ARTICLES DE TRITIUM POUR L'INSTALLATION D'ÉLIMINATION DU TRITIUM DE WOLSONG

Séoul, le 17 janvier 2001

Votre Excellence,

C'est en rappel de l'historique de coopération entre la République de Corée et le Canada pour le développement et l'application de l'énergie atomique à des fins pacifiques et du désir commun du Canada et de la République de Corée que nous désirons poursuivre la collaboration relative au transfert des articles de tritium pour l'installation d'élimination du tritium de Wolsong.

La présente concerne une décision de la République de Corée relative à la construction d'une installation d'élimination du tritium sur le site de Wolsong site dans le but d'extraire le tritium qui s'accumule dans le modérateur et le caloporteur (eau lourde) des réacteurs de puissance CANDU de Wolsong et l'intention du Canada de collaborer avec la République de Corée dans ce projet.

Les articles de tritium ne sont pas du ressort de l'accord de coopération entre le gouvernement du Canada et le gouvernement de la République de Corée concernant le développement et l'utilisation de l'énergie nucléaire à des fins pacifiques, signé le 26 janvier 1976. La présente note établit le fondement d'un accord visant à obtenir des assurances de non-prolifération du « tritium » , des installations ou usines de tritium et équipement connexes » et des « renseignements sur le tritium » transférés du Canada à la Corée; de toute réplique d'installations ou d'usines de tritium et équipement connexe »; des « installations ou usines de tritium et équipement connexes » que nos gouvernements ont convenu de construire sur le fondement des « renseignements sur le tritium » fournis relativement à la présente note; du tritium traité ou extrait grâce à ces « installations ou usines de tritium et équipement connexe »; et de l'eau lourde qui ne fait pas encore l'objet de l'accord et qui est traitée avec les « installations ou usines de tritium et équipement connexe » relativement à la présente note.

Son Excellence
Lee Joung-binn
Ministre des Affaires étrangères et du Commerce
de la République de Corée

En ce sens, je propose les considérations suivantes :

I Aux fins de la présente note :

1. Par « tritium », on entend « tritium, composés du tritium, mélanges renfermant du tritium dans lequel le rapport des atomes de tritium aux atomes d'hydrogène dépasse une partie par mille, et les produits ou dispositifs contenant ce qui précède, à l'exclusion des produits ou des dispositifs qui contiennent moins de 1,48 x 10^3 gigabecquerels (GBq) de tritium »;

2. Par « installations ou usines de tritium et équipement connexe », on entend:

   a. installations ou usines servant à produire, à récupérer, à extraire, à concentrer ou à manipuler du tritium;

   b. équipement des installations ou usines de tritium, comme suit :

      (i) unités de réfrigération à l'hydrogène ou à l'hélium capables de refroidir à 23 K (-250 °C) ou moins, ayant une capacité d'évacuation de la chaleur supérieure à 150 W;

      (ii) systèmes de stockage ou de purification de l'hydrogène utilisant des hydrures métalliques comme milieu de stockage ou de purification;

   c. catalyseurs platinés spécialement conçus ou préparés pour faciliter la réaction d'échange de l'isotope de l'hydrogène entre l'hydrogène et l'eau pour la récupération du tritium dans l'eau lourde, ou pour la production d'eau lourde ».

3. « Renseignements sur le tritium » s'entend des « données techniques sous forme physique, incluant, sans toutefois s'y limiter : les dessins techniques, les négatifs et les épreuves photographiques, les enregistrements, les données de conception, et les manuels techniques et manuels d'utilisation qui peuvent être utilisés pour la conception, la production, l'exploitation ou l'essai d'« installations ou d'usines de tritium ou d'équipement connexe », à l'exception des données accessibles au public, c.-à-d. présentées dans les livres et périodiques publiés, ainsi que des données que le gouvernement du Canada estime être pertinentes aux fins de la présente note, après en avoir informé le gouvernement de la République de Corée ».

II Le « tritium », les « installations ou usines de tritium et l'équipement connexe », « les renseignements sur le tritium » et l'eau lourde relativement à la présente note:

1. ne doivent être utilisés qu'à des fins pacifiques seulement, et en particulier, ne doivent pas être utilisés pour le développement, la fabrication, l'acquisition ou la détonation d'armes nucléaires ou d'autres dispositifs explosifs;

2. ne doivent pas être transférés en dehors de la juridiction du gouvernement de la République de Corée sans consentement préalable écrit du gouvernement du Canada;

3. doivent être assujettis aux mesures appropriées de protection physique afin d'éviter tout enlèvement non autorisé.

III Des procédures administratives seront établies conjointement avec la Commission canadienne de sûreté nucléaire et le ministère coréen des Sciences et de la Technologie dans le but de faciliter la mise en application de la présente note. Ces procédures comprendront des préavis et des avis ultérieurs concernant le transfert et le retransfert des articles relativement à la présente note, un rapport d'inventaire annuel des articles qui sont assujettis à la présente note et, au besoin, des visites du site.

IV Les dispositions de la présente note ne doivent pas être utilisées pour garantir des avantages commerciaux.

V Nos gouvernements doivent se consulter chaque année, ou sur demande de l'un ou l'autre des gouvernements pour assurer la mise en oeuvre efficace de la présente note.

Si ce qui précède est acceptable pour le gouvernement de la République de Corée, je propose que la présente note, qui est équivalente en anglais et en français, ainsi que la réponse à cette note constituent un accord entre nos deux gouvernements qui entrera en vigueur le jour de votre réponse à la présente note et demeurera en vigueur aussi longtemps que tout article mentionné dans la présente note existe; la présente note peut être modifiée ou prendre fin par un accord écrit.

Veuillez accepter, Votre Excellence, l'expression de mes sentiments distingués,

Arthur C. Perron
Ambassadeur
Extraordinaire et plénipotentiaire
du Canada auprès de la République de Corée

[KOREAN TEXT – TEXTE CORÉEN]

II

서울, 2001년 1월 19일

각 하,

본인은 다음과 같은 각하의 오늘 일자의 각서를 접수하였음을 확인하는 영광을 가지는 바입니다.

"본인은 평화적 목적의 원자력 에너지 개발 및 응용을 위한 대한민국과 카나다간 협력의 역사와 월성 원전 삼중수소 제거 설비를 위한 삼중수소 장비 이전에 대해서 협력을 추구하려는 카나다와 대한민국의 공동희망에 대해 언급하는 영광을 가지는 바입니다.

본건은 월성에 소재한 캔두형 원자로내의 중수감속재와 중수냉각재에 축적된 삼중수소를 제거하기 위해 월성 원전에 삼중수소 제거 설비를 건설하려는 대한민국의 결정과 그 사업에 대한민국과 협조하고자 하는 카나다측의 희망에 관한 것입니다.

삼중수소 장비는 1976년 1월 26일 서명된 대한민국 정부와 카나다 정부간의 평화적 목적을 위한 원자력의 개발 및 응용에 있어서의 협력을 위한 협정의 범위내에의 장비가 아닙니다. 이 각서는 "삼중수소", "삼중수소 시설 또는 공장 그리고 그에 필요한 장비" 그리고 카나다로부터 한국으로 이전되는 "삼중수소 정보", "삼중수소 시설 또는 공장 및 그에 필요한 장비"의 복제, 이 각서에 따라 공급되는 "삼중수소 정보"의 기초하에 건설하기로 양국 정부가 합의한 "삼중수소 시설 또는 공장 그리고 그에 필요한 장비", "삼중수소 시설 또는 공장 그리고 그에 필요한 장비"로부터 처리 또는 추출되는 삼중수소, 그리고 이 각서에 따라 "삼중수소 시설 또는 공장 그리고 그에 필요한 장비"로부터 처리되나 한-카나다간 원자력협정의 규율대상이 아닌 중수 등에 대해 핵 비확산 확약을 적용하는 합의의 기초를 기술하는 것입니다.

아써 페론
카나다
특명전권대사 각하

이를 고려하여, 본인은 아래와 같이 제안하는 영광을 가지는 바입니다.

Ⅰ. 이 각서의 목적상

1. "삼중수소"는 삼중수소, 삼중수소 화합물, 삼중수소 혼합물로서 수소에 대한 삼중수소의 원자비가 1/1000을 초과하는 것과 전기 사항을 포함하는 제품이나 장치로 정의되나 1.48×10^3 기가베크렐(GB_q) 이하의 삼중수소를 포함하는 제품이나 장치는 제외된다.
2. 삼중수소 설비 또는 공장 및 장비는 다음과 같이 정의된다.
   가. 삼중수소의 생산, 회수, 추출, 농축 또는 처리를 위한 설비 또는 공장
   나. 삼중수소 설비 또는 공장을 위한 다음 장비
      (1) 23켈빈(영하 250도) 이하로 냉각시킬 수 있고 냉동용량이 150와트를 초과하는 헬륨 또는 수소냉동기
      (2) 수소 동위원소를 저장 또는 정제하기 위한 매체로서 금속수소화물을 이용하는 수소 동위원소의 저장 또는 정제체제
   다. 중수로부터 삼중수소를 회수하거나 중수생산을 위해 수소와 물 사이에서 수소 동위원소 교환반응을 촉진하려는 목적으로 특별히 설계되거나 제조된 백금촉매

3. 삼중수소 관련 정보란 일반서적 또는 정기간행물 등 공중이 이용가능한 자료를 제외하고 삼중수소 설비 또는 공장 및 장비의 설계, 생산, 운전 또는 시험에 사용될 수 있는 물리적인 형태의 기술적인 자료로서 도면, 사진, 인쇄물, 기록, 설계자료, 기술 및 운전 설명서와 카나다 정부가 대한민국 정부에 제공하는 것으로서 이 각서의 목적상 정보로 간주되는 것으로 정의되나 이에 한정되지 아니한다.

Ⅱ. 이 각서에 따른 "삼중수소, 삼중수소 시설, 또는 공장 그리고 그에 필요한 장비"와 중수는

1. 평화적인 목적으로만 사용되어야 하며, 특히, 핵무기 또는 기타 핵 폭발장치의 개발, 제조 또는 취득이나 폭파를 위해 사용되어서는 아니된다.
2. 카나다 정부의 사전 서면동의가 없이 대한민국의 관할권 밖으로 이전되어서는 아니된다.
3. 승인되지 아니한 제거를 방지하기 위한 적절한 물리적 방호 조치를 받아야 한다.

Ⅲ. 이 각서의 이행을 촉진시키기 위하여 카나다 핵 안전위원회 및 한국 과학기술부가 공동으로 행정 절차를 마련한다. 이 절차는 이 각서에 따라 이전 및 재이전되는 물품의 사전 및 사후 통보, 이 각서에 따른 물품의 년간 재고 보고서, 그리고, 적절한 경우, 현장 방문을 포함한다.

Ⅳ. 이 각서의 조항은 상업적 이득을 획득할 목적으로 이용되지 아니한다.

Ⅴ. 양국 정부는 이 각서의 효과적 이행을 위하여 매년 또는 어느 일방정부의 요청에 따라 협의한다.

전술한 내용이 대한민국 정부에 수용 가능하다면, 영어 및 불어를 공히 정본으로 하는 이 각서는, 각하의 답신과 함께, 양국 정부간 합의를 구성하고 각하의 회답각서일자에 발효되며, 이 각서에 언급된 사항이 존재하는 한 이 각서는 유효하고, 서면동의에 의해 개정 또는 종료될 수 있음을 제안하는 영광을 가지는 바입니다.

각하에게 본인의 최고의 경의를 표하는 바입니다."

본인은 대한민국 정부를 대표하여 대한민국 정부가 카나다 정부의 상기 제의를 수락함을 각하에게 알려드리며, 각하의 각서와 한국어 및 영어를 공히 정본으로 하는 이 회답각서가 이 문제에 대한 양국 정부의 합의를 구성하고 이 각서일자에 발효한다는 것을 확인하는 영광을 또한 가지는 바입니다.

본인은 이 기회에 각하에게 본인의 최고의 경의를 거듭 표하는 바입니다.

이 정 빈

이 정 빈
대한민국 외교통상부장관

[ENGLISH TEXT – TEXTE ANGLAIS]

II

MINISTRY OF FOREIGN AFFAIRS AND TRADE
REPUBLIC OF KOREA

Seoul, 19 January, 2001

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date, which reads as follows:

[See note I]

I have further the honour to inform Your Excellency, on behalf of the Government of the Republic of Korea, that the Government of the Republic of Korea accepts the above proposal of the Government of Canada and to confirm that Your Excellency's Note and this reply, which is equally authentic in Korean and English, constitute an agreement between the two Governments on this matter which enters into force on this date.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Lee Joung-binn
Minister of Foreign Affairs and Trade
of the Republic of Korea

His Excellency
Mr. Arthur C. Perron
Ambassador
Extraordinary and Plenipotentiary
of Canada to the Republic of Korea

[TRANSLATION – TRADUCTION]

II

Ministère des affaires étrangères et du commerce
République de Corée

Séoul, le 19 janvier 2001

Monsieur l'Ambassadeur,

J'ai l'honneur d'accuser réception de votre note de ce jour, qui se lit comme suit :

[Voir note I]

J'ai également l'honneur de vous informer, au nom du Gouvernement de la République de Corée, que celle-ci accepte la proposition du Gouvernement du Canada ci-dessus et de confirmer que votre note et la présente réponse, dont les versions coréenne et anglaise font également foi, constituent un accord à ce sujet entre nos deux Gouvernements, qui entre en vigueur aujourd'hui.

Je saisis cette occasion pour vous renouveler, Monsieur l'Ambassadeur, les assurances de ma très haute considération.

LEE JOUNG-BINN
Ministre des affaires étrangères et du commerce
de la République de Corée

No. 49667

Republic of Korea
and
Bulgaria

Agreement between the Government of the Republic of Korea and the Government of the Republic of Bulgaria on maritime transport. Sofia, 16 June 2005

Entry into force: *24 November 2005 by notification, in accordance with article 21*

Authentic texts: *Bulgarian, English and Korean*

Registration with the Secretariat of the United Nations: *Republic of Korea, 6 July 2012*

République de Corée
et
Bulgarie

Accord entre le Gouvernement de la République de Corée et le Gouvernement de la République de Bulgarie relatif au transport maritime. Sofia, 16 juin 2005

Entrée en vigueur : *24 novembre 2005 par notification, conformément à l'article 21*

Textes authentiques : *bulgare, anglais et coréen*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 6 juillet 2012*

[BULGARIAN TEXT – TEXTE BULGARE]

СПОГОДБА

МЕЖДУ

ПРАВИТЕЛСТВОТО НА РЕПУБЛИКА КОРЕЯ

И

ПРАВИТЕЛСТВОТО НА РЕПУБЛИКА БЪЛГАРИЯ

ЗА МОРСКИ ТРАНСПОРТ

Правителството на Република Корея и Правителството на Република България, наричани по-нататък "Договарящи се страни",

В желанието си да развиват приятелските отношения, съществуващи между двете страни, както и да укрепят сътрудничеството си в областта на морския транспорт на основата на принципа на свободата на предоставяне на транспортни услуги,

Убедени, че развитието на морските превози между двете страни ще допринесе за разширяване на търговията между тях и засилване на тяхното икономическо сътрудничество,

Се договориха за следното:

ЧЛЕН 1

За целите на тази Спогодба:

1. Терминът "*кораб на една от Договарящите се страни*" означава всеки кораб, регистриран на територията й в съответствие с нейното законодателство и плаващ под знамето на тази Договаряща се страна.

Този термин не включва:

а) военни кораби;

б) плавателни средства, конструирани или експлоатирани с нетърговски цели;

в) хидрографските, океанографските и научно-изследователските кораби;

г) риболовните кораби, риболовно-изследователските, инспекционните кораби и рибо-преработвателните кораби;

д) кораби, използвани за пилотаж, влачене и спасителни операции на море;

е) кораби, снабдени с ядрени енергийни устройства;

ж) кораби, които не са в съответствие със законодателството на Договарящите се страни.

2. Терминът "*членове на екипажа*" означава капитана на кораба и всяко друго лице, което е действително наето на борда на кораба, за да изпълнява задължения по време на рейса, което притежава документ за самоличност, определен в чл. 8 на настоящата Спогодба и чието име е включено в екипажния списък.

3. Терминът "*компетентни органи*" означава:

За Република Корея - Министерство на морските дела и риболова;

За Република България - Министерство на транспорта и съобщенията.

4. Терминът "*корабоплавателна компания на една Договаряща се страна*" означава превозвач или наемател със седалище на територията на една от Договарящите се страни, регистриран в съответствие със законодателството на тази Договаряща се страна.

5. Терминът "*пристанища*" означава местата, официално определени за качване/слизане на пътници или товарене/разтоварване на стоки, включително официално определените кейови места, намиращи се на територията на всяка от Договарящите се страни, одобрени и отворени за международно корабоплаване.

6. Терминът "*пътник*" означава всяко лице, превозвано от кораб на някоя от Договарящите се страни, което не е нието на борда на кораба и не изпълнява никакви задължения на този кораб и чието име е включено в списъка на пътниците на кораба;

7. Терминът "*пиратство*" означава онези действия, определени в член 101 на Конвенцията на Организацията на обединените нации по морско право от 1982 г.

ЧЛЕН 2

1. Договарящите се страни потвърждават, че остават верни на принципите на свобода на търговското корабоплаване, свободната и лоялна конкуренция и свободата на избора.

2. Договарящите се страни са съгласни да не се намесват в международното търговско корабоплаване чрез каквито и да било дискриминационни действия, които биха могли да бъдат в ущърб на морските интереси на другата Договаряща се страна или които биха могли да възпрепятстват свободната дейност на нейните корабоплавателни компании и кораби, в противоречие с принципите, посочени в ал.1 на настоящия член.

ЧЛЕН 3

1. Договарящите се страни се споразумяха:

а) да осигуряват участието на корабоплавателните компании и корабите на другата Договаряща се страна в морски превози между пристанищата на двете Договарящи се страни, както и да не възпрепятстват участието им в извършването на превози между пристанищата на другата Договаряща се страна и пристанищата на трети страни.

б) да предоставят на корабите на другата Договаряща се страна, включително и на чартираните кораби, независимо от знамето, под което

плават, същите преимущества, от които се ползват корабите, плаващи под тяхно знаме.

в) да си сътрудничат с оглед на отстраняването на всякакви препятствия, които биха могли да затруднят развитието на морската търговия между пристанищата на Договарящите се страни, както и между техните пристанища и пристанищата на трети страни или които биха могли да затруднят различните дейности, свързани с тази търговия.

2. Разпоредбите на ал.1 на настоящия член не засягат правото на корабите на трети страни да участват в превозите по море между пристанищата на Договарящите се страни.

ЧЛЕН 4

Всяка от Договарящите се страни предоставя на корабоплавателните компании на другата Договаряща се страна правото да основават представителства на нейна територия в съответствие с приложимото в тази Договарящата се страна законодателство. Представителствата имат право да работят като агенти на корабоплавателните компании на Договарящите се страни. Всяка Договаряща се страна предоставя на представителствата на корабоплавателните компании на другата Договаряща се страна същия режим, както и на своите корабоплавателни компании по отношение на нормалното протичане на търговската им дейност.

ЧЛЕН 5

Настоящата Спогодба не се прилага за каботажа. Плаването на кораб на една от Договарящите се страни от едно пристанище до друго пристанище на територията на другата Договаряща се страна с цел разтоварване/натоварване на стоки и/или слизане/ качване на пътници, пристигащи от или пътуващи за трети страни, не се счита за каботаж. Настоящият член се прилага и за кораби, включително и чартирани от корабоплавателни компании на другата Договаряща се страна, плаващи под знамето на трети страни.

ЧЛЕН 6

1. Всяка Договаряща се страна предприема, в рамките на своето национално законодателство, всички необходими мерки за облекчаване и ускоряване на морските превози, за предотвратяване на необоснованото забавяне на кораби и за възможното ускоряване и опростяване на всички административни, митнически, здравни и други формалности в пристанищата. Настоящата разпоредба не се счита за ограничаваща правото на Договарящите се страни да прилагат националното си законодателство относно митническия и здравен режим, както и други контролни мерки по отношение на безопасността на корабите и пристанищата, предпазване на

морската среда от замърсяване, опазване на човешкия живот, превоз на опасни товари, идентификация на стоките и влизане на чужденците във всяка от Договарящите се страни.

2. Всяка от Договарящите се страни предоставя на корабите на другата Договаряща се страна същия режим, както на собствените си кораби, участващи в международни морски превози, по отношение на свободния достъп до пристанищата, начисляването на пристанищни данъци и такси, използването на пристанищата за товарене/разтоварване на стоки и за качване/слизане на пътници. Тази алинея се прилага и за корабите, чартирани от корабоплавателни компании на другата Договаряща се страна, плаващи под знамето на трета страна.

3. Разпоредбите на ал.2 на настоящия член не задължават никоя от Договарящите се страни да освободи корабите на другата Договаряща се страна, включително и чартираните от корабоплавателни й компании, плаващи под знамето на трета страна от изискванията за задължителен пилотаж, валидни за корабите на първата.

ЧЛЕН 7

1. Всяка Договаряща се страна признава документите, които удостоверяват националността на корабите, тонажните сертификати и другите корабни документи, издадени или признати от другата Договаряща се страна.

2. Корабите на едната Договаряща се страна, снабдени с Международни свидетелства за тонажа се освобождават от ново измерване в пристанищата на другата Договаряща се страна. Пристанищните такси се изчисляват на базата на тези свидетелства.

ЧЛЕН 8

Договарящите се страни взаимно признават удостоверенията за самоличност на моряците, издадени от компетентните власти на другата Договаряща се страна. Тези удостоверения за самоличност са:

за Република Корея – "Моряшки паспорт" или "Паспорт" ("Seafarer's Passport" or "Passport") и

за Република България – "Моряшки паспорт ("Seaman's Passport").

ЧЛЕН 9

1. По време на престоя на кораба в пристанище на другата Договаряща се страна, членовете на екипажа могат да слизат на брега за временно пребиваване без визи, при условие че капитанът на кораба е предоставил екипажен списък на съответните органи на тази Договаряща се страна. При

слизане на брега и завръщане на кораба тези лица подлежат на емиграционните и митнически формалности, които са в сила в пристанището.

2. На лицата, притежаващи посочените в чл.8 удостоверения за самоличност, се разрешава да влизат, напускат или преминават през територията на другата Договаряща се страна с цел завръщане в родината, присъединяване към кораб или поради друга причина, считана за приемлива от съответните органи на тази Договаряща се страна и в съответствие със законодателството й. Във всички описани в настоящата алинея случаи се изисква документите за самоличност да съдържат виза на другата Договаряща се страна.

3. Когато член на екипажа слезе в пристанище на другата Договаряща се страна по здравословни или други причини, признати от съответните органи на тази Договаряща се страна, тези органи дават необходимото разрешение, за да може да остане на нейна територия, да получи медицинско обслужване или да бъде хоспитализиран, да се завърне в родината си или да продължи към друго пристанище, за да се качи на кораб, независимо какво транспортно средство ще използва. Всяка от Договарящите се страни оказва необходимата медицинска помощ на членовете на екипажа на корабите на другата Договаряща се страна в съответствие с вътрешното си законодателство.

4. По време на престоя на кораб на едната от Договарящите се страни на територията на другата Договаряща се страна, корабособственикът или негов представител имат правото да се свържат или срещнат с членовете на екипажа на кораба в съответствие с приложимото в тази Договаряща се страна законодателство.

ЧЛЕН 10

Разпоредбите на чл.8 и 9 се прилагат за всяко лице, което не е гражданин на нито една от Договарящите се страни, но което притежава удостоверение за самоличност, съответстващо на разпоредбите на Конвенцията за улесняване на международното морско корабоплаване от 1965 година и Приложението към нея. Такова удостоверение за самоличност се издава от държава, която е страна по Конвенцията и Договарящите се страни предоставят правото на неговия притежател да се върне в страната, издала това удостоверение.

ЧЛЕН 11

1. При спазване на разпоредбите на чл.9, всяка от Договарящите се страни прилага своето национално законодателство относно режима на влизане, пребиваване и напускане на чужденци.

2. При спазване на разпоредбите на чл.9, всяка от Договарящите се страни запазва правото си да забранява достъпа до територията си на лица, притежаващи удостоверенията за самоличност, описани в чл.8, но считани за нежелани.

ЧЛЕН 12

1. Всяка от Договарящите се страни упражнява наказателна юрисдикция в съответствие с чл.27 от Конвенцията на Организацията на обединените нации по морско право от 1982 г.

2. Корабите и членовете на екипажа на всяка от Договарящите се страни спазват съответните закони на другата Договаряща се страна по време на престоя си в териториалното море, вътрешните води и пристанищата на тази Договаряща се страна.

3. Пътниците и корабоплавателните компании на всяка от Договарящите се страни се подчиняват на законите на другата Договаряща се страна по отношение на влизането, престоя и заминаването на чужденци, както и вноса, износа и съхранение на стоки.

4. Договарящите се страни не се намесват в граждански спорове между корабособственика, капитана и другите членове на екипажа, възникнали във връзка с трудовите правоотношения и условията на работа на борда на кораба на другата Договаряща се страна.

ЧЛЕН 13

В интерес на постигането на по-голяма сигурност за човешкия живот на море и засилване на възможността за преустановяване и предотвратяване на трафика или превоза на емигранти по море, Договарящите се страни се стремят към сътрудничество в борбата срещу такива незаконни действия в териториалните им води.

ЧЛЕН 14

1. Всяка от Договарящите се страни предприема необходимите мерки за сигурността на корабите, лицата и имуществото на борда на корабите на другата Договаряща се страна, докато тези кораби се намират в нейни териториални води или в пристанищата й, срещу всякакви незаконни действия, каквото е пиратството.

2. Ако някоя от Договарящите се страни получи информация за планирани незаконни действия в пристанищата си или в териториалното си море срещу кораб на другата Договаряща се страна, информираната страна предприема необходимите мерки за предпазване на кораба, членовете на екипажа, товара му, както и други лица и имущество на борда на този кораб.

ЧЛЕН 15

Капитаните на кораби на Договарящите се страни могат да наемат членове на екипажа от другата Договаряща се страна, за да продължат пътуването.

ЧЛЕН 16

1. Ако кораб на една от Договарящите се страни, включително и чартираните от корабоплавателните й компании, претърпи корабокрушение, заседне, бъде изхвърлен на брега или претърпи друга авария в териториално море или пристанище на другата Договаряща се страна, съответните власти на последната оказват на пътниците, членовете на екипажа, кораба и неговия товар същата помощ и защита, каквито предоставя и на кораб, плаващ под нейно знаме.

2. Разследването на авариите, определени в ал.1 на настоящия член, се извършва от съответните власти на тази Договаряща се страна, в чието териториално море или пристанище е произтекла аварията. Компетентните органи на тази Договаряща се страна са длъжни възможно най-бързо да предоставят резултатите от разследването на компетентните органи и дипломатическото представителство на другата Договаряща се страна.

3. Товарът, оборудването, запасите и другото имущество, разтоварено или спасено от кораб, претърпял авария, не се облага с мита или други данъци и такси, дължими при внос, при условие че не са предназначени за потребление и използване на територията на другата Договаряща се страна.

4. Разпоредбите на ал.3 на настоящия член не са в противоречие с разпоредбите, регламентиращи временното складиране на товари на териториите на Договарящите се страни.

5. Всички разходи и такси по отношение на оказване на помощ и спасяване се прилагат в съответствие с международните конвенции, законите и правилата на всяка от Договарящите се страни.

ЧЛЕН 17

Доходите на корабоплавателните компании на всяка от Договарящите се страни, получени от морски превози на територията на другата Договаряща се страна, могат да бъдат използвани за плащания на територията на тази друга Договаряща се страна или превеждани в първата Договаряща се страна или трети страни в свободно конвертируема валута по курса за деня към датата на превеждането й в съответствие с националното й законодателство.

ЧЛЕН 18

1. С цел осигуряване на ефективно прилагане на настоящата Спогодба и развиване на сътрудничеството в областта на морския транспорт, се създава Смесена комисия по морски транспорт, съставена от представители на Договарящите се страни.

2. Смесената комисия по морски транспорт:

а) се занимава с въпроси от взаимен интерес, които могат да възникнат в процеса на прилагане на настоящата Спогодба;

б) изучава начините за укрепване на сътрудничеството в областта на частния морски сектор;

в) обсъжда други въпроси, свързани с подпомагане на сътрудничеството и отношенията в областта на морския транспорт, както и с оказване на взаимопомощ в международните организации.

3. Заседанията на Смесената комисия по морски транспорт се провеждат поредно в Република Корея и в Република България на дати, определени по взаимно съгласие по дипломатически път.

ЧЛЕН 19

Всеки спор, възникнал при интерпретацията или прилагането на настоящата Спогодба, се разрешава чрез консултации и преговори между компетентните органи на Договарящите се страни или по дипломатически път.

ЧЛЕН 20

Настоящата Спогодба може да бъде изменяна с взаимно писмено съгласие по дипломатически път.

ЧЛЕН 21

1. Настоящата Спогодба влиза в сила от деня, в който е получена втората от дипломатическите ноти, с които всяка от Договарящите се страни уведомява другата, че са изпълнени всички необходими изисквания на съответните национални законодателства за влизането й в сила.

2. Настоящата Спогодба се сключва за период от пет години, след което срокът й на действие се продължава автоматично за още пет години, освен ако някоя от Договарящите се страни не уведоми другата писмено за своето желание за денонсирането й шест месеца преди нейното изтичане.

3. Изменението или денонсирането на настоящата Спогодба няма да промени валидността или действието на проекти или договорености, сключени съгласно нейните разпоредби преди датата на влизането в сила на това изменение или денонсиране.

В УВЕРЕНИЕ НА ГОРЕИЗЛОЖЕНОТО, долуподписаните, надлежно упълномощени от своите правителства, подписаха тази спогодба.

Подписана в София на шестнадесети юни 2005 г. в два оригинални екземпляра, всеки от които на корейски, български и английски език, като трите текста имат еднаква сила. В случай на различия в тълкуването на текста на тази Спогодба, за меродавен се приема текстът на английски език.

ЗА ПРАВИТЕЛСТВОТО НА РЕПУБЛИКА КОРЕЯ

ЗА ПРАВИТЕЛСТВОТО НА РЕПУБЛИКА БЪЛГАРИЯ

[ENGLISH TEXT – TEXTE ANGLAIS]

AGREEMENT
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF KOREA
AND
THE GOVERNMENT OF THE REPUBLIC OF BULGARIA
ON MARITIME TRANSPORT

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

Desiring to further develop the friendly relations existing between the two countries, and to strengthen their cooperation in the field of maritime transport, based on the principle of freedom of transport, and

Convinced that the development of maritime transport between both countries will contribute to the expansion of their bilateral trade and the strengthening of their economic cooperation,

Have agreed as follows,

ARTICLE 1

For the purposes of this Agreement:

1. The term "vessel of a Contracting Party" shall mean any vessel registered in the territory of either Contracting Party and flying its flag in accordance with its laws and regulations. However, this term shall not include:
   (a) warships;
   (b) public vessels designed or used for non-commercial purposes;
   (c) vessels for hydrographic, oceanographic and scientific research;
   (d) fishing vessels, fishery research and inspection vessels, and fishery factory vessels;
   (e) vessels used for pilotage, towage or sea-rescue;
   (f) nuclear propelled vessels; and
   (g) those vessels that do not comply with the laws and regulations of either Contracting Party.

2. The term "crewmembers" shall mean the master and any other person actually employed for duties on board during the voyage of a vessel whose names are included on its crew list and who hold the identity documents referred to in Article 8 of this Agreement.

3. The term "competent authority" shall mean, in the case of the Republic of Korea, the Ministry of Maritime Affairs and Fisheries, and in the case of the Republic of Bulgaria, the Ministry of Transport and Communications.

4. The term "shipping company of a Contracting Party" shall mean a carrier or charterer which has its domicile in the territory of either Contracting Party and is registered or incorporated under the laws and regulations of that Contracting Party.

5. The term "ports" shall mean places, officially designated for embarkation or disembarkation of passengers, or loading and unloading of cargo, including officially recognized anchorages in the territory of either Contracting Party, which are approved for and open to international shipping.

6. The term "passengers" shall mean those persons carried by the vessel of either Contracting Party, who are not employed for or engaged in any capacity on such vessel, and whose names are included in the passenger list of such vessel.

7. The term "piracy" shall mean those acts as defined in Article 101 of "The United Nations Convention on the Law of the Sea (UNCLOS)", done in 1982.

ARTICLE 2

1. The Contracting Parties affirm that they remain devoted to the principles of freedom of merchant shipping, free and fair competition, and freedom of choice.

2. The Contracting Parties agree that they shall not interfere in international maritime shipping by way of discriminatory actions, of whatever kind, which might cause prejudice to the maritime interests of the other Contracting Party or which might hamper the free activities of its shipping companies and vessels, contrary to the principles referred to in paragraph 1 of this Article.

ARTICLE 3

1. The Contracting Parties agree:

(a) to ensure the participation of the shipping companies and the vessels of the other Contracting Party in the maritime transport between the ports of both Contracting Parties and not to prevent them from participating in the maritime transport between their ports and the ports of third countries;

(b) to confirm that the vessels or the part thereof chartered by shipping companies of the other Contracting Party, irrespective of the flag they are flying, shall be granted the same advantages as if they were flying the flag of that other Contracting Party; and

(c) to cooperate with a view to eliminating all obstacles that might impede the development of maritime trade between the ports of the Contracting Parties and between their ports and the ports of third countries, or which might interfere with the various activities connected with such trade.

2. The provisions of paragraph 1 of this Article shall not infringe the right of vessels of third countries to participate in maritime transport services between the ports of the Contracting Parties.

ARTICLE 4

In accordance with its laws and regulations, each Contracting Party shall grant the shipping companies of the other Contracting Party the right to establish branch offices in its territory. The branch offices shall have the right to act as agents for their principal offices. Both Contracting Parties agree that they shall grant the branch offices of the shipping companies of the other Contracting Party the same treatment as it accords to its own shipping companies in respect of their normal commercial operations.

ARTICLE 5

This Agreement shall not apply to cabotage. Where a vessel of either Contracting Party sails from one port to another in the territory of the other Contracting Party for the purpose of discharging inward cargo and/or disembarking passengers from abroad or loading outward cargo and/or embarking passengers destined for foreign countries, it shall not be regarded as cabotage. This Article shall also apply to vessels or the part thereof chartered by shipping companies of the other Contracting Party flying the flag of a third country.

ARTICLE 6

1. Each Contracting Party shall take, within the limits of its laws and regulations, all necessary measures to facilitate and expedite maritime traffic, to prevent unnecessary delays to vessels, and to expedite and simplify, as much as possible, all administrative, customs, health and other formalities required in its ports. However, this provision shall not be construed as restricting the rights of the Contracting Parties regarding the enforcement of customs and health laws and regulations or any other control measures regarding the safety of vessels and ports, protection against marine pollution, safeguard of human lives, carriage of dangerous goods, identification of goods and admission of foreigners.

2. Each Contracting Party shall grant to vessels of the other Contracting Party the same treatment as it accords to its own vessels engaged in international maritime transport in respect of free access to ports, levying of port dues and taxes, use of ports for loading and unloading of cargoes and for embarking and disembarking of passengers. This paragraph shall also apply to vessels or the part thereof chartered by shipping companies of the other Contracting Party flying the flag of a third country.

3. The provisions of paragraph 2 of this Article shall not oblige either Contracting Party to extend to the vessels of the other Contracting Party, or the vessels chartered by shipping companies of the other Contracting Party flying the flag of a third country, exemptions from compulsory pilotage requirements granted to its own vessels.

ARTICLE 7

1. Either Contracting Party shall recognize documents certifying the nationality of vessels, tonnage certificates and any other official vessel documents issued or recognized by the other Contracting Party.

2. The vessels of either Contracting Party holding International Tonnage Certificates shall be exempted from any other measurement requirements in the ports of the other Contracting Party. Port fees shall be calculated on the basis of these certificates.

ARTICLE 8

The Contracting Parties shall mutually recognize the seamen's identity documents issued by the relevant authorities of the other Contracting Party. These identity documents shall be in the case of the Republic of Korea "Seafarer's Passport" or "Passport", and in the case of the Republic of Bulgaria "Seaman's Passport".

ARTICLE 9

1. Crewmembers may go ashore and stay for temporary shore leave without visas during the stay of their vessel in a port of the other Contracting Party, provided that the master of the vessel has submitted the crew list to the relevant authorities of that other Contracting Party. However, when going ashore and returning to the vessel, the person in question shall be subject to the immigration and customs formalities in force in that port.

2. Any persons holding the identity documents referred to in Article 8 shall be allowed to enter, leave, or pass through the territory of the other Contracting Party for the purposes of repatriation, joining a vessel or other reasons acceptable to the relevant authorities of that other Contracting Party, in accordance with the laws and regulations of that other Contracting Party. In all cases referred to in this paragraph, the identity document must bear the visa of the other Contracting Party.

3. In the case that any crewmember disembarks at a port of the other Contracting Party for reasons of health or for any other reasons recognized by the relevant authorities of that other Contracting Party, such authorities shall give the necessary authorization in order to enable the person concerned to remain in its territory, to receive medical attention or to be hospitalized, or to return to his/her country or to proceed to another port of embarkation by any means of transport. Either Contracting Party shall, in accordance with its domestic legislation, provide the necessary medical aid to crewmembers of a vessel of the other Contracting Party.

4. While a vessel of one Contracting Party stays in the territory of the other Contracting Party, the owner or his/her representative of the vessel shall be entitled to contact or to meet with the crewmembers of the vessel, in accordance with the relevant laws and regulations of that other Contracting Party.

ARTICLE 10

The provisions of Articles 8 and 9 apply to any person who is not a national of either Contracting Party but who possesses identity documents pursuant to the provisions of the Convention on Facilitation of International Maritime Traffic, 1965 and the Attachment thereto. Such identity documents shall be issued by a country, which is a party to the said Convention, and the Contracting Parties shall grant to the holder of the identity documents the right to return to the issuing country.

ARTICLE 11

1. Without prejudice to the provisions of Article 9, the domestic laws and regulations of each Contracting Party relating to the entry, stay and departure of foreigners shall remain applicable.

2. Notwithstanding the provisions of Article 9, the Contracting Parties shall, however, reserve the right to prohibit access to their respective territories to any person holding the identity documents referred to in Article 8, whose access they consider undesirable.

ARTICLE 12

1. Either Contracting Party shall exercise criminal jurisdiction in accordance with Article 27 of the UNCLOS, done in 1982.

2. The vessels and crewmembers of either Contracting Party shall observe the relevant laws and regulations of the other Contracting Party during their stay in the territorial sea, internal waters and ports of that other Contracting Party.

3. The passengers and shipping companies of either Contracting Party shall comply with the laws and regulations of the other Contracting Party regarding the entry, stay and departure of passengers, as well as the import, export and storage of goods.

4. Either Contracting Party shall not intervene in civil disputes between the shipowner, the master and the other crewmembers, related to the labour relations and the conditions of work on board a vessel of the other Contracting Party.

ARTICLE 13

In the interests of increasing their efforts to make life at sea more secure and enhancing their capability to suppress and prevent the trafficking or transport of migrants by sea, the Contracting Parties shall endeavor to cooperate in combating such unlawful acts in their territorial waters.

ARTICLE 14

1. Each Contracting Party shall undertake the necessary measures for the security of vessels of the other Contracting Party as well as the security of the persons and property on their boards, while these vessels are located in its territorial waters or in its ports, against any illegal actions such as piracy.

2. If either Contracting Party has been informed of planned illegal actions in its ports or in its territorial waters against a vessel of the other Contracting Party, the informed Party shall take the required measures for safeguarding the vessel, crewmembers, cargo and other persons and property on board this vessel.

ARTICLE 15

For the purposes of ensuring the safe manning, the master of a vessel of either Contracting Party shall be entitled, in order to continue the voyage, to recruit crewmembers from the other Contracting Party.

ARTICLE 16

1. If a vessel of either Contracting Party, or a vessel or the part thereof chartered by shipping companies of either Contracting Party suffers shipwreck, runs aground, is cast ashore or suffers any other accident in the territorial sea or ports of the other Contracting Party, the relevant authorities of that other Contracting Party shall render the same assistance and protection to the passengers, crewmembers, vessel and cargo, as it renders to a vessel flying its own flag.

2. Investigation of incidents specified in paragraph 1 of this Article shall be conducted by the relevant authorities of the Contracting Party in whose territorial sea or ports the incident occurred. The competent authority of that Contracting Party shall, as soon as possible, report the findings of the investigation to the competent authority and the diplomatic mission of the other Contracting Party.

3. Cargo, equipment, stores and other properties unloaded or rescued from a vessel in distress shall not be liable to customs duties or other taxes of any kind imposed upon by reason of importation, provided that they are not delivered for use or consumption in the territory of the other Contracting Party.

4. The provisions of paragraph 3 of this Article shall be without prejudice to the laws regulating the temporary storage of freight on the territories of the Contracting Parties.

5. All expenses and taxes relating to rescue and assistance shall be applied in accordance with the international conventions and the laws and regulations of each Contracting Party.

ARTICLE 17

The revenues of the shipping companies of either Contracting Party accruing from shipping services rendered in the territory of the other Contracting Party may, in accordance with the laws and regulations of that other Contracting Party, be used for making payments in the territory of that other Contracting Party or transferred abroad in freely convertible currencies at the market exchange rate prevailing on the date of transfer.

ARTICLE 18

1. To ensure the effective implementation of this Agreement and promote cooperation between the Contracting Parties in the field of maritime transport, a Joint Maritime Committee shall be established, composed of representatives designated by the Contracting Parties.

2. The Joint Maritime Committee shall:
   (a) deal with matters of mutual interest, which may arise from the application of this Agreement;
   (b) study ways of enhancing cooperation in the field of private maritime sectors; and
   (c) discuss other matters relating to the improvement of maritime transport relations including the furtherance of cooperation and mutual assistance in international organizations.

3. The Joint Maritime Committee shall meet alternately in the Republic of Korea and the Republic of Bulgaria on dates mutually agreed upon through diplomatic channels.

ARTICLE 19

Any dispute arising out of the interpretation or application of this Agreement shall be settled through consultations and negotiations between the competent authorities of the Contracting Parties or through diplomatic channels.

ARTICLE 20

This Agreement may be amended by mutual written consent, exchanged through diplomatic channels.

ARTICLE 21

1. This Agreement shall enter into force on the date on which both Contracting Parties have notified each other through an exchange of diplomatic notes that all necessary domestic legal requirements for its entry into force have been fulfilled.

2. This Agreement shall remain in force for a period of five (5) years, and shall be automatically extended thereafter for successive five (5) year periods unless either Contracting Party notifies the other Contracting Party in writing of its intention to terminate this Agreement six (6) months before its expiry.

3. The amendment or termination of this Agreement shall not affect the validity or duration of projects undertaken or arrangements concluded under this Agreement prior to the effective date of its amendment or termination.

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

Done in duplicate in Sofia this sixteenth day of June, 2005 in the Korean, Bulgarian 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 BULGARIA

[KOREAN TEXT – TEXTE CORÉEN]

대한민국 정부와 불가리아공화국 정부간의 해상운송에 관한 협정

대한민국 정부와 불가리아공화국 정부(이하 "체약당사국"이라 한다)는,

운송자유의 원칙을 바탕으로 양국간 기존의 우호관계를 더욱 증진하고, 해상운송분야에서의 협력을 강화하기를 희망하며,

양국간 해상운송의 발전이 양국간 무역의 증진과 경제협력의 강화에 기여할 것임을 확신하여,

다음과 같이 합의하였다.

제 1 조

이 협정의 목적상,

1. "체약당사국의 선박"이라 함은 어느 일방체약당사국의 법령에 따라 그 영역 안에 등록되고 그 나라의 국기를 게양한 모든 선박을 말한다. 다만, 다음 각목의 선박은 이에 포함되지 아니한다.

가. 군함

나. 비상업적 목적으로 설계되거나 이용되는 공용의 선박

다. 수로·해양 및 과학연구용 선박

라. 어선, 어업연구 및 조사선, 어로 공모선

마. 도선·예인선 또는 해난구조용 선박

바. 핵추진선박

사. 어느 일방체약당사국의 법령에 부합하지 아니하는 선박

2. "선원"이라 함은 선박의 항해기간 동안 승선하여 실제로 취업중인 자로서 선원명부에 그 성명이 기재되어 있고, 제8조에 따른 신분증명서를 소지한 선장 및 그 밖의 자를 말한다.

3. "권한있는 당국"이라 함은 대한민국의 경우에는 해양수산부를, 불가리아공화국의 경우에는 교통통신부를 말한다.

4. "체약당사국의 해운회사"라 함은 어느 일방체약당사국의 영역 안에 주소를 가지고 그 국가의 법령에 따라 등록·설립된 운송업자 또는 용선업자를 말한다.

5. "항구"라 함은 여객의 승선·하선이나 화물의 적재·하역을 위하여 공식적으로 지정된 장소(어느 일방체약당사국의 영역 안에서 공식적으로 승인된 정박소를 포함한다)로서, 국제해상운송을 위하여 승인·개방된 것을 말한다.

6. "여객"이라 함은 어느 일방체약당사국의 선박에 의하여 운송되는 자로서 그 선박을 위하여 고용되거나 그 선박과 관련된 업무를 수행하지 아니하며, 그 선박의 여객명부에 성명이 기재되어 있는 자를 말한다.

7. "해적행위"라 함은 1982년에 채택된 해양법에 관한 국제연합협약 제101조에 규정된 행위를 말한다.

제 2 조

1. 체약당사국은 상업운송 자유의 원칙, 자유·공정경쟁의 원칙 및 선택자유의 원칙을 준수할 것을 확인한다.

2. 체약당사국은 제1항에 규정된 원칙에 반하여, 타방체약당사국의 해상이익을 저해하거나 타방체약당사국의 해운회사 및 선박의 자유로운 활동을 제한할 수 있는 모든 유형의 차별적 행위에 의하여 국제해상운송을 방해하지 아니하는 데 합의한다.

제 3 조

1. 체약당사국은 다음 각목의 사항에 대하여 합의한다.
   가. 양 체약당사국의 항구간의 해상운송에 있어 타방체약당사국의 해운회사와 선박의 참여를 보장하고, 동 회사 및 선박이 양국의 항구와 제3국의 항구간의 해상운송에 참여하는 것을 방해하지 아니할 것.
   나. 타방체약당사국의 해운회사가 전부 또는 일부를 용선한 선박에 대하여는 그 선박이 실제로 게양한 국기와 관계없이, 타방체약당사국의 국기가 게양된 것과 동일한 혜택이 부여된다는 것을 확인할 것
   다. 양 체약당사국의 항구간 또는 양국의 항구와 제3국의 항구간의 해상교역의 발전을 저해하거나 그러한 교역과 관련된 제반 활동을 방해할 수 있는 모든 장애를 제거하기 위하여 협력할 것

2. 제1항의 규정은 제3국의 선박이 양 체약당사국의 항구간의 해상운송용역에 참여하는 권리를 침해하지 아니한다.

제 4 조

각 체약당사국은 자국의 법령에 따라 타방체약당사국의 해운회사에게 자국의 영역 안에 지사를 설립할 권리를 부여한다. 지사는 본사를 위하여 대리인으로 활동할 권리를 갖는다. 양 체약당사국은 타방체약당사국의 해운회사의 지사에게 그들의 정상적인 영업활동과 관련하여 자국의 해운회사에 대하여 부여하는 것과 동등한 대우를 부여하는 데 합의한다.

제 5 조

이 협정은 연안항해에 적용되지 아니한다. 다만, 어느 일방체약당사국의 선박이 수입화물의 하역 그리고/또는 외국에서 승선한 여객의 하선을 위하여 항해하는 경우와 수출화물의 적재 그리고/또는 외국으로 향하는 여객의 승선을 위하여 항해하는 경우로서, 타방체약당사국의 영역 안에 있는 한 항구에서 다른 항구로 항해하는 경우에는 이를 연안항해로 간주하지 아니한다. 이 조는 타방체약당사국의 해운회사가 전부 또는 일부를 용선한 선박으로서 제3국의 국기를 게양하고 있는 선박에 대하여도 적용된다.

제 6 조

1. 각 체약당사국은 해상교통을 용이하게 하고, 이를 촉진시키며, 선박에 대한 불필요한 지연을 방지하고, 자국의 항구에서 요구되는 제반 행정·통관·보건위생 및 그 밖의 절차를 최대한 신속히 하며, 이를 간소화하기 위하여 자국 법령의 범위 안에서 필요한 모든 조치를 행한다. 그러나, 이 규정은 세관 및 보건위생 법령의 시행에 관한 체약당사국의 권리, 선박 및 항구의 안전, 해양오염의 방지, 인간생명의 보호, 위험물질의 운반, 물품의 확인 및 외국인의 입국승인에 대한 그 밖의 통제조치의 시행에 관한 체약당사국의 권리를 제한하는 것으로 해석되지 아니한다.

2. 각 체약당사국은 자국 항구에의 자유로운 접안, 항구사용료 및 조세의 부과, 화물의 적재·하역 및 여객의 승선·하선을 위한 항구의 사용과 관련하여 국제해상운송에 종사하는 자국의 선박에 대하여 부여하는 것과 동등한 대우를 타방체약당사국의 선박에게 부여한다. 이 항은 타방체약당사국의 해운회사가 전부 또는 일부를 용선한 선박으로서 제3국의 국기를 게양하고 있는 선박에 대하여도 적용된다.

3. 제2항의 규정은 어느 일방체약당사국이 자국 선박에 대하여 부여하는 강제도선의 요건으로부터의 면제를 타방체약당사국의 선박 또는 타방체약당사국의 해운회사가 용선한 선박으로서 제3국의 국기를 게양하고 있는 선박에 대하여 부여할 의무를 부과하지 아니한다.

제 7 조

1. 어느 일방체약당사국은 타방체약당사국이 발급·승인한 문서로서 선박의 국적증명서, 톤수증명서 및 그 밖의 공식적인 선박문서를 인정한다.

2. 국제톤수증명서를 소지한 어느 일방체약당사국의 선박은 타방체약당사국의 항구 안에서 제반 측정요구로부터 면제되며, 항구수수료는 동 증명서를 근거로 하여 산정된다.

제 8 조

일방체약당사국은 타방체약당사국의 관계당국이 발급한 선원신분증명서를 상호 인정한다. 동 신분증명서는 대한민국의 경우에는 "선원수첩" 또는 "여권", 불가리아공화국의 경우에는 "선원수첩"을 말한다.

제 9 조

1. 선박의 선장이 타방체약당사국의 관계당국에 선원명부를 제출한 경우에는, 선원은 선박이 타방체약당사국의 항구 안에 정박해 있는 동안 사증 없이 상륙

하여 임시로 체류할 수 있다. 그러나, 당해 선원은 상륙 및 귀선 시 그 항구 안에서 시행중인 출입국절차와 세관절차에 따라야 한다.

2. 제8조에 규정된 신분증명서를 소지한 자는 본국으로 귀환하거나 선박에 승선하고자 하는 경우 또는 타방체약당사국의 관계당국이 수락할 수 있는 그 밖의 사유가 있는 경우에는 타방체약당사국의 법령에 따라 동 체약당사국의 영역을 입국·출국 또는 통과할 수 있다. 이 항에 규정된 모든 경우에 있어서, 신분증명서에는 타방체약당사국의 사증이 첨부되어 있어야 한다.

3. 선원이 건강상의 이유나 타방체약당사국의 관계당국이 승인한 그 밖의 사유에 의하여 타방체약당사국의 항구에 하선한 경우에는, 동 관계당국은 당해 선원의 치료나 입원을 위하여 그 나라 영역 안에서의 체류, 어떠한 교통수단에 의한 자국으로 귀국 또는 다른 출국항으로의 이동에 필요한 허가를 부여한다. 어느 일방체약당사국은 자국의 국내법에 따라 타방체약당사국의 선박의 선원에 대하여 필요한 의료지원을 제공한다.

4. 일방체약당사국의 선박이 타방체약당사국의 영역 안에 있는 동안 동 선박의 소유자나 대리인은 타방체약당사국의 관계법령에 따라 선박의 선원과 접촉하거나 만날 권리가 있다.

제 10 조

제8조 및 제9조의 규정은 어느 일방체약당사국의 국민은 아니지만 1965년에 채택된 국제해상교통의촉진에관한협약 및 그 부속서의 규정에 따른 신분증명서를 소지한 자에게도 적용된다. 동 신분증명서는 동 협약의 당사국에 의하여 발급된 것이어야 하며, 체약당사국은 동 신분증명서의 소지자에게 그 증명서를 발급한 국가로 귀환할 권리를 부여한다.

제 11 조

1. 제9조의 규정을 침해하지 아니하고, 외국인의 입국·체류 및 출국에 관한 각 체약당사국의 국내법은 여전히 적용된다.

2. 제9조의 규정에 불구하고, 체약당사국은 제8조에 규정된 신분증명서의 소지자가 자국의 영역으로 진입하는 것이 바람직하지 아니하다고 판단하는 경우에는 이를 금지할 권리를 보유한다.

제 12 조

1. 일방체약당사국은 1982년에 채택된 해양법에 관한 국제연합협약 제27조에 따라 형사관할권을 행사한다.

2. 일방체약당사국의 선박 및 선원은 타방체약당사국의 영해·내수 및 항구에 체류하는 동안 타방체약당사국의 관련 법령을 준수한다.

3. 일방체약당사국의 여객 및 해운회사는 여객의 입국·체류 및 출국과 상품의 수입·수출 및 보관에 관한 타방체약당사국의 법령을 준수한다.

4. 일방체약당사국은 타방체약당사국의 선상에서의 근로조건 및 노무관계와 관련된 선주·선장 및 그 밖의 선원간의 민사분쟁에 개입하지 아니한다.

제 13 조

해상에서의 인명의 안전을 위한 노력을 증진하고, 해상을 통한 불법거래 및 밀입국자의 수송을 진압·예방하는 역량을 강화하기 위하여, 체약당사국은 자국의 영해에서 이러한 불법행위를 퇴치하는 데 협력하기 위하여 노력한다.

제 14 조

1. 각 체약당사국은 타방체약당사국의 선박이 자국의 영해 또는 항구에 체류하는 경우, 해적행위와 같은 불법행위로부터 타방체약당사국의 선박과 그 승선자 및 적재된 재산의 안전을 보호하기 위하여 필요한 조치를 행한다.

2. 어느 일방체약당사국이 자국의 항구 또는 영해에서 타방체약당사국의 선박에 대한 계획된 불법행위에 관한 정보를 입수한 경우, 동 일방체약당사국은 선

박·선원·화물과 그 밖의 다른 승선자 및 그 적재된 재산을 보호하기 위하여 필요한 조치를 행한다.

제 15 조

일방체약당사국의 선박의 선장은 항해를 계속하기 위하여 안전한 승무원 배치를 확보할 목적으로 타방체약당사국의 선원을 모집할 권리를 가진다.

제 16 조

1. 일방체약당사국의 선박이나 동 체약당사국의 해운회사가 전부 또는 일부를 용선한 선박이 타방체약당사국의 영해나 항구에서 난파·좌초 또는 해안에 걸리거나 그 밖의 조난을 당한 경우에는, 동 타방체약당사국의 관계당국은 여객·선원·선박 및 화물에 대하여 자국의 국기를 게양한 선박에게 부여하는 것과 동등한 지원 및 보호를 부여한다.

2. 제1항에 규정된 사고의 조사는 그 나라의 영해나 항구에서 사고가 발생한 체약당사국의 관계당국이 실시한다. 동 체약당사국의 권한있는 당국은 가능한 한 신속히 동 사고의 조사결과를 타방체약당사국의 권한있는 당국 및 외교공관에 통보한다.

3. 해난사고를 당한 선박으로부터 양륙·구조된 화물·장비·저장품 및 그 밖의 재산에 대하여는 관세 또는 수입에 따르는 그 밖의 다른 종류의 세금이 부과되지 아니하나, 타방체약당사국의 영역 안에서의 사용 또는 소비를 위하여 인도되지 아니하여야 한다.

4. 제3항의 규정은 체약당사국의 영역에서 화물의 임시저장을 규율하는 법령을 저해하지 아니한다.

5. 구조 및 지원에 관한 모든 비용과 세금은 국제협약 및 각 체약당사국의 법령에 따라 적용된다.

제 17 조

일방체약당사국의 해운회사가 타방체약당사국의 영역 안에서 제공한 해운용역으로부터 발생하는 수익은 동 타방체약당사국의 법령에 따라 그 영역 안에서의 결제에 사용되거나 송금당일의 시장환율에 의하여 자유태환성통화로 해외로 송금될 수 있다.

제 18 조

1. 이 협정의 효과적인 이행을 확보하고 해상운송분야에서의 양 체약당사국간 협력을 증진하기 위하여 양 체약당사국이 지정하는 대표로 구성되는 해운공동위원회를 설립한다.

2. 해운공동위원회는,
   가. 이 협정의 적용으로 인하여 발생할 수 있는 상호 관심사항을 다룬다.
   나. 민간해운분야에서의 협력증진방안을 연구한다.
   다. 국제기구에서의 협력과 상호지원의 증진을 포함하여 해상운송관계의 개선에 관한 그 밖의 사항을 논의한다.

3. 해운공동위원회는 외교경로를 통하여 상호 합의되는 날에 대한민국과 불가리아공화국에서 교대로 개최된다.

제 19 조

이 협정의 해석이나 적용으로부터 발생하는 모든 분쟁은 양 체약당사국의 권한있는 당국간의 협의와 교섭 또는 외교경로를 통하여 해결한다.

제 20 조

이 협정은 외교경로를 통하여 교환되는 상호 서면합의에 의하여 개정될 수 있다.

제 21 조

1. 이 협정은 양 체약당사국이 협정의 발효에 필요한 모든 국내법적 요건이 충족되었음을 외교공한의 교환을 통하여 상호 통보하는 날에 발효한다.

2. 이 협정은 5년간 유효하며, 어느 일방체약당사국이 타방체약당사국에 이 협정의 종료의사를 협정의 기한이 만료되기 6월 전에 서면으로 통보하지 아니하는 한 5년씩 자동적으로 갱신된다.

3. 이 협정의 개정이나 종료는 그러한 개정이나 종료의 발효일 이전에 이 협정에 따라 추진된 사업 및 체결된 약정의 효력이나 그 존속에 영향을 미치지 아니한다.

이상의 증거로, 아래 서명자는 그들 각자의 정부로부터 정당하게 권한을 위임받아 이 협정에 서명하였다.

2005년 6 월 16 일 소피아 에서 모두 동등하게 정본인 한국어 · 불가리아어 및 영어로 각 2부씩 작성하였다. 해석상의 차이가 있는 경우에는 영어본이 우선한다.

대한민국 정부를 대표하여

불가리아공화국 정부를 대표하여

[TRANSLATION – TRADUCTION]

ACCORD ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE DE CORÉE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE DE BULGARIE RELATIF AU TRANSPORT MARITIME

Le Gouvernement de la République de Corée et le Gouvernement de la République de Bulgarie (ci-après dénommés « les Parties contractantes »),

Désireux de développer davantage les relations amicales existant entre les deux pays et de renforcer leur coopération dans le domaine du transport maritime, sur la base du principe de la liberté du transport, et

Convaincus que le développement du transport maritime entre les deux pays contribuera à l'expansion de leur commerce bilatéral et au renforcement de leur coopération économique,

Sont convenus de ce qui suit :

Article premier

Aux fins du présent Accord :

1. L'expression « navire d'une Partie contractante » s'entend de tout navire immatriculé dans le territoire d'une Partie contractante et battant son pavillon, conformément à ses lois et règlements. Cependant, cette expression ne comprend pas :

a) les navires de guerre;

b) les navires publics conçus ou utilisés à des fins non commerciales;

c) les navires de recherche hydrographique, océanographique et scientifique;

d) les navires de pêche, les navires de recherche et d'inspection de la pêche et les navires-usines de pêche;

e) les navires utilisés pour le pilotage, le remorquage ou le sauvetage en mer;

f) les navires à propulsion nucléaire; et

g) les navires qui ne respectent pas les lois et règlements des Parties contractantes.

2. L'expression « membres de l'équipage » désigne le capitaine et toute autre personne effectivement employée à bord pendant le voyage d'un navire dont les noms figurent sur la liste de l'équipage et qui détiennent les pièces d'identité visées à l'article 8 du présent Accord.

3. L'expression « autorité compétente » désigne, dans le cas de la République de Corée, le Ministère des affaires maritimes et de la pêche, et dans le cas de la République de Bulgarie, le Ministère des transports et des communications.

4. L'expression « compagnie de transport maritime d'une Partie contractante » désigne un transporteur ou un affréteur qui a son domicile sur le territoire d'une Partie contractante et qui est enregistré ou constitué en vertu des lois et règlements de ladite Partie contractante.

5. Le terme « ports » s'entend des endroits, officiellement désignés pour l'embarquement ou le débarquement de passagers ou le chargement et le déchargement de cargaisons, y compris des

places d'amarrage officiellement reconnues sur le territoire de chacune des Parties contractantes, qui sont approuvés pour la navigation internationale et ouverts à celle-ci.

6. Le terme « passagers » désigne les personnes transportées par le navire de l'une des Parties contractantes qui ne sont pas employées ou engagées à un titre quelconque à bord dudit navire et dont les noms figurent sur la liste des passagers.

7. Le terme « piraterie » s'entend des actes tels que définis à l'article 101 de « La Convention des Nations Unies sur le droit de la mer » (1982).

Article 2

1. Les Parties contractantes affirment qu'elles demeurent fidèles aux principes de la liberté de la marine marchande, de la concurrence libre et loyale, et de la liberté de choix.

2. Les Parties contractantes conviennent de ne pas interférer avec le transport maritime international par des actions discriminatoires, de quelque nature que ce soit, susceptibles de porter préjudice aux intérêts maritimes de l'autre Partie contractante ou qui risqueraient d'entraver les libres activités de ses compagnies de transport maritime et navires, en contradiction avec les principes visés au paragraphe 1.

Article 3

1. Les Parties contractantes conviennent :

a) d'assurer la participation des compagnies de transport maritime et des navires de l'autre Partie contractante au transport maritime entre les ports des deux Parties contractantes et de ne pas les empêcher de participer au transport maritime entre leurs ports et ceux de pays tiers;

b) de confirmer que les navires ou la partie de navires affrétés par des compagnies de transport maritime de l'autre Partie contractante, indépendamment de leur pavillon, bénéficient des mêmes avantages que s'ils battaient pavillon de ladite autre Partie contractante; et

c) de coopérer en vue d'éliminer tous les obstacles susceptibles d'entraver le développement du commerce maritime entre les ports des Parties contractantes et entre leurs ports et ceux de pays tiers, ou qui pourraient interférer avec les diverses activités liées audit commerce.

2. Les dispositions du paragraphe 1 n'affectent pas le droit des navires de pays tiers de participer à des services de transport maritime entre les ports des Parties contractantes.

Article 4

Conformément à ses lois et règlements, chaque Partie contractante accorde aux compagnies de transport maritime de l'autre Partie contractante le droit d'établir des succursales sur son territoire. Les succursales ont le droit d'agir en tant qu'agents pour le compte de leurs bureaux principaux. Les deux Parties contractantes conviennent que chacune d'entre elles accorde aux succursales des compagnies de transport maritime de l'autre Partie contractante le traitement qu'elle accorde à ses propres compagnies de transport maritime à l'égard des opérations commerciales normales.

Article 5

Le présent Accord ne s'applique pas au cabotage. N'est pas considéré comme du cabotage le fait pour un navire d'une Partie contractante de naviguer d'un port à un autre sur le territoire de l'autre Partie contractante aux fins de décharger une cargaison entrante et de débarquer des passagers venant de l'étranger ou de charger une cargaison sortante et d'embarquer des passagers à destination de pays étrangers. Le présent article s'applique également aux navires ou à la partie de navires affrétés par des compagnies de transport maritime de l'autre Partie contractante battant pavillon d'un pays tiers.

Article 6

1. Chaque Partie contractante prend, dans les limites de ses lois et règlements, toutes les mesures nécessaires pour faciliter et accélérer le trafic maritime, éviter les retards inutiles aux navires, et accélérer et simplifier, autant que possible, toutes les formalités administratives, douanières, sanitaires et autres mesures requises dans ses ports. Toutefois, la présente disposition ne peut être interprétée comme limitant les droits des Parties contractantes en ce qui concerne l'application des lois et règlements en matière douanière et sanitaire ou d'autres mesures de contrôle relatives à la sécurité des navires et des ports, à la protection contre la pollution marine, à la sauvegarde des vies humaines, au transport de marchandises dangereuses, à l'identification des marchandises et à l'accès des étrangers.

2. Chaque Partie contractante accorde aux navires de l'autre Partie contractante le même traitement que celui qu'elle accorde à ses propres navires employés dans le transport maritime international à l'égard du libre accès aux ports, de la perception des droits et taxes portuaires, de l'utilisation des ports aux fins du chargement et du déchargement de cargaisons et de l'embarquement et du débarquement de passagers. Le présent paragraphe s'applique également aux navires ou à la partie de navires affrétés par des compagnies de transport maritime de l'autre Partie contractante battant pavillon d'un pays tiers.

3. Les dispositions du paragraphe 2 n'obligent aucune Partie contractante à étendre aux navires de l'autre Partie contractante, ou aux navires affrétés par des compagnies de transport maritime de l'autre Partie contractante battant pavillon d'un pays tiers, les dispenses de pilotage obligatoire accordées à ses propres navires.

Article 7

1. Chaque Partie contractante reconnaît les documents certifiant la nationalité des navires, les certificats de jauge et autres documents officiels des navires délivrés ou reconnus par l'autre Partie contractante.

2. Les navires de chaque Partie contractante titulaires de certificats internationaux de jauge sont exemptés de toute autre exigence de mesure dans les ports de l'autre Partie contractante. Les redevances portuaires sont calculées sur la base desdits certificats.

Article 8

Les Parties contractantes reconnaissent mutuellement les pièces d'identité des gens de mer délivrées par les autorités compétentes de l'autre Partie contractante. Ces pièces d'identité sont, dans le cas de la République de Corée, le « Seafarer's Passport » ou « Passport », et dans le cas de la République de Bulgarie, le « Seaman's Passport ».

Article 9

1. Pendant le séjour du navire d'une des Parties contractantes dans un port de l'autre Partie contractante, les membres de l'équipage peuvent descendre à terre et y demeurer temporairement sans visa, sous réserve que le capitaine du navire soumette la liste de l'équipage aux autorités compétentes de l'autre Partie contractante. À leur descente à terre et à leur retour à bord du navire, les membres de l'équipage en question sont tenus de se soumettre aux formalités d'immigration et douanières en vigueur dans ce port.

2. Les personnes titulaires des pièces d'identité visées à l'article 8 sont autorisées à entrer sur le territoire de l'autre Partie contractante, à en sortir ou à le traverser en vue d'être rapatriées, de rejoindre un navire ou pour toute autre raison acceptable par les autorités compétentes de l'autre Partie contractante, conformément aux lois et règlements de celle-ci. Dans tous les cas visés au présent paragraphe, la pièce d'identité doit être revêtue du visa de l'autre Partie contractante.

3. Dans le cas où un membre de l'équipage débarque dans un port de l'autre Partie contractante pour des raisons de santé ou pour d'autres raisons reconnues par les autorités compétentes de cette autre Partie contractante, lesdites autorités donnent les autorisations nécessaires pour permettre à la personne concernée de demeurer sur le territoire, de recevoir des soins médicaux ou d'être hospitalisée, ou de retourner dans son pays ou de gagner un autre port d'embarquement par tout moyen de transport. Chaque Partie contractante prête l'assistance médicale nécessaire aux membres de l'équipage d'un navire de l'autre Partie contractante conformément à sa législation nationale.

4. Lorsqu'un navire d'une Partie contractante séjourne sur le territoire de l'autre Partie contractante, le propriétaire du navire ou son représentant a le droit de contacter ou de rencontrer les membres de l'équipage du navire, conformément aux lois et règlements pertinents de cette autre Partie contractante.

Article 10

Les dispositions des articles 8 et 9 s'appliquent à toute personne qui n'est pas un ressortissant de l'autre Partie contractante mais qui possède des pièces d'identité conformément aux dispositions de la Convention visant à faciliter le trafic maritime international (1965) et de son Annexe. Ces pièces d'identité sont délivrées par un pays qui est partie à ladite Convention et les Parties contractantes accordent au titulaire des pièces d'identité le droit de retourner dans le pays de délivrance.

Article 11

1. Sans préjudice des dispositions de l'article 9, les lois et règlements internes de chaque Partie contractante relatifs à l'entrée, au séjour et au départ des étrangers restent applicables.

2. Nonobstant les dispositions de l'article 9, les Parties contractantes se réservent toutefois le droit d'interdire l'accès à leurs territoires respectifs à toute personne titulaire des pièces d'identité visées à l'article 8 dont elles jugent l'accès indésirable.

Article 12

1. Chaque Partie contractante exerce sa juridiction pénale conformément à l'article 27 de la Convention des Nations Unies sur le droit de la mer (1982).

2. Les navires et les membres de l'équipage de chaque Partie contractante respectent les lois et règlements pertinents de l'autre Partie contractante durant leur séjour dans la mer territoriale, les eaux intérieures et les ports de cette autre Partie contractante.

3. Les passagers et les compagnies de transport maritime de l'une des Parties contractantes se conforment aux lois et règlements de l'autre Partie contractante concernant l'entrée, le séjour et la sortie de passagers, ainsi que l'importation, l'exportation et le stockage de marchandises.

4. Aucune Partie contractante n'intervient dans les litiges civils entre l'armateur, le capitaine et les autres membres de l'équipage liés aux relations de travail et aux conditions de travail à bord d'un navire de l'autre Partie contractante.

Article 13

Dans leurs efforts pour rendre la vie en mer plus sûre et améliorer leur capacité de réprimer et prévenir le trafic ou le transport de migrants par mer, les Parties contractantes s'efforcent de coopérer dans la lutte contre ces actes illicites dans leurs eaux territoriales.

Article 14

1. Chaque Partie contractante prend toutes les mesures nécessaires pour assurer la sûreté des navires de l'autre Partie contractante, ainsi que celle des personnes et des biens à leur bord, lorsque ces navires sont dans ses eaux territoriales ou ses ports, contre tout acte illicite tel que la piraterie.

2. Si l'une ou l'autre Partie contractante a été informée de la planification d'un acte illicite dans ses ports ou dans ses eaux territoriales contre un navire de l'autre Partie contractante, elle prend toutes les mesures nécessaires pour la protection du navire, des membres de l'équipage, de la cargaison et des autres personnes et biens à bord dudit navire.

Article 15

Pour pourvoir les effectifs de sécurité, le capitaine d'un navire d'une Partie contractante a le droit, afin de continuer le voyage, de recruter des membres de l'équipage parmi les ressortissants de l'autre Partie contractante.

Article 16

1. Si un navire de l'une des Parties contractantes, ou un navire ou la partie d'un navire affrétés par des compagnies de transport maritime de l'une des Parties contractantes, fait naufrage, s'échoue, est jeté sur le rivage ou subit tout autre accident dans la mer territoriale ou les ports de l'autre Partie contractante, les autorités compétentes de cette autre Partie prêteront la même assistance et assureront la même protection aux passagers, aux membres de l'équipage, au navire et à la cargaison que celles accordées à un navire battant son propre pavillon.

2. L'enquête sur les incidents visés au paragraphe 1 est menée par les autorités compétentes de la Partie contractante dans la mer territoriale ou les ports de laquelle l'incident a eu lieu. L'autorité compétente de la Partie contractante rend compte, dès que possible, des résultats de l'enquête à l'autorité compétente et à la mission diplomatique de l'autre Partie contractante.

3. La cargaison, les équipements, les marchandises et autres biens déchargés ou sauvés du navire en détresse, s'ils ne sont pas livrés aux fins d'utilisation ou de consommation sur le territoire de l'autre Partie contractante, ne sont pas soumis aux droits de douane ni à aucune autre taxe.

4. Les dispositions du paragraphe 3 sont sans préjudice des lois régissant le stockage temporaire de marchandises sur le territoire des Parties contractantes.

5. Tous les frais et taxes liés au sauvetage et à l'assistance sont appliqués en conformité avec les conventions internationales et les lois et règlements de chaque Partie contractante.

Article 17

Les revenus des compagnies de transport maritime de chacune des Parties contractantes provenant des services de transport maritime fournis sur le territoire de l'autre Partie contractante peuvent, conformément aux lois et règlements de cette autre Partie contractante, être utilisés pour effectuer des paiements sur le territoire de cette autre Partie contractante ou être transférés à l'étranger en devises librement convertibles au taux de change du marché en vigueur à la date du transfert.

Article 18

1. Afin d'assurer la mise en œuvre effective du présent Accord et de promouvoir la coopération entre les Parties contractantes dans le domaine du transport maritime, un Comité maritime conjoint composé de représentants désignés par les Parties contractantes est mis en place.

2. Le Comité maritime conjoint :

a) traite les questions d'intérêt commun pouvant découler de l'application du présent Accord;

b) examine les moyens de renforcer la coopération dans le domaine des secteurs maritimes privés; et

c) discute d'autres questions relatives à l'amélioration des relations de transport maritime, y compris la poursuite de la coopération et l'assistance mutuelle au sein des organisations internationales.

3. Le Comité maritime conjoint se réunit tour à tour en République de Corée et en République de Bulgarie à des dates mutuellement convenues par la voie diplomatique.

Article 19

Tout différend portant sur l'interprétation ou l'application du présent Accord est réglé par voie de consultations et de négociations entre les autorités compétentes des Parties contractantes ou par la voie diplomatique.

Article 20

Le présent Accord peut être amendé par consentement mutuel écrit, échangé par la voie diplomatique.

Article 21

1. Le présent Accord entrera en vigueur à la date à laquelle les deux Parties contractantes se seront notifié, par échange de notes diplomatiques, que les procédures juridiques internes nécessaires à cet effet ont été accomplies.

2. Le présent Accord reste en vigueur pour une période de cinq ans, et est automatiquement prorogé pour des périodes successives de cinq ans, sauf si l'une des Parties contractantes notifie à l'autre Partie contractante, par écrit, son intention de le dénoncer six mois avant son échéance.

3. L'amendement ou la dénonciation du présent Accord n'ont aucune incidence sur la validité ou la durée des projets entrepris ou des arrangements conclus en vertu de ses dispositions avant la date d'effet de l'amendement ou de la dénonciation.

EN FOI DE QUOI, les soussignés, dûment autorisés par leurs Gouvernements respectifs, ont signé le présent Accord.

FAIT à Sofia, le 16 juin 2005, en double exemplaire, en langues coréenne, bulgare et anglaise, tous les textes faisant également foi. En cas de divergence d'interprétation, le texte anglais prévaut.

Pour le Gouvernement de la République de Corée :

CHEONG JAI-SIK

Pour le Gouvernement de la République de Bulgarie :

NIKOLAY VASSILEV

No. 49668

Republic of Korea
and
Bulgaria

Agreement between the Government of the Republic of Korea and the Government of the Republic of Bulgaria for the reciprocal promotion and protection of investments (with protocol). Sofia, 12 June 2006

Entry into force: *1 November 2006, in accordance with article 13*

Authentic texts: *Bulgarian, English and Korean*

Registration with the Secretariat of the United Nations: *Republic of Korea, 6 July 2012*

République de Corée
et
Bulgarie

Accord entre le Gouvernement de la République de Corée et le Gouvernement de la République de Bulgarie pour la promotion et la protection réciproques des investissements (avec protocole). Sofia, 12 juin 2006

Entrée en vigueur : *1er novembre 2006, conformément à l'article 13*

Textes authentiques : *bulgare, anglais et coréen*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 6 juillet 2012*

[BULGARIAN TEXT – TEXTE BULGARE]

ДОГОВОР

МЕЖДУ

ПРАВИТЕЛСТВОТО НА РЕПУБЛИКА КОРЕЯ

И

ПРАВИТЕЛСТВОТО НА РЕПУБЛИКА БЪЛГАРИЯ

ЗА ВЗАИМНО НАСЪРЧАВАНЕ И ЗАЩИТА НА ИНВЕСТИЦИИТЕ

Правителството на Република Корея и Правителството на Република България (наричани по-долу "Договарящи се Страни"),

В желанието си да развиват икономическото сътрудничество между двете Държави,

С намерение да насърчават и създават благоприятни условия за инвестиции от инвеститори от едната държава на територията на другата държава, на основата на равенство и взаимна изгода,

Признавайки, че насърчаването и взаимната защита на инвестициите съгласно настоящия договор ще стимулира инициативите в тази област,

Се договориха за следното:

ЧЛЕН 1

Определения

За целите на този Договор:

1. Понятието "инвестиции" означава всякакъв вид вложение, инвестирано от инвеститор на едната Договаряща се Страна на територията на другата Договаряща се Страна и включва по-специално, но не изключително:

(a) движимо и недвижимо имущество, както и всякакви други свързани с тях имуществени права, като ипотеки, залози, тежести и подобни права;

(b) дялове, акции и облигации и всякаква друга форма на участие в компания или стопанско предприятие и права или участия произтичащи от тях;

(c) парични искове или искове за изпълнение, имащо икономическа стойност, свързани с инвестиция;

(d) права на интелектуална собственост, включително авторски права, търговски марки, патенти, промишлен дизайн, технологически процеси, ноу хау, търговски тайни, търговски наименования и гудуил;

(e) право, дадено по силата на закон или съгласно договор и всякакви лицензи и разрешения, съгласно закон, включително правата за проучване, извличане, обработване или експлоатация на природни ресурси;

Всякаква промяна във формата, в която вложенията са инвестирани, няма да засегне тяхната класификация като инвестиция, при условие че тази промяна не е в противоречие със законите на съответната Договаряща се Страна.

2. Понятието "инвеститор" означава:

(a) физическо лице, което е гражданин на едната Договаряща се Страна, в съответствие с нейното законодателство и инвестира на територията на другата Договаряща се Страна;

(b) всякаква компания, организация, дружество или друга форма на сдружение, регистрирано или учредено в съответствие със законодателството на едната

Договаряща се Страна и със седалище на територията на тази Договаряща се Страна, независимо от неговия правен статут, което инвестира на територията на другата Договаряща се Страна.

3. Понятието "приходи" означава суми, получени от инвестиция и по-специално, но не изключително включва печалби, лихва, прираст на капитала, акции, дивиденти, хонорари и всички видове такси.

4. Понятието "територия" означава:

(a) По отношение на Република Корея: територията на Република Корея както и тези морски зони, включително морското дъно и подпочвените пластове, прилежащи към външните граници на териториалното море на Република Корея, върху които Република Корея упражнява, в съответствие с международното право суверенни права и юрисдикция за целите на проучване и експлоатация на природни ресурси в тези зони;

(b) По отношение на Република България: територията под суверенитета на Република България, включително териториалното море, както и континенталния шелф и изключителната икономическа зона, върху която Република България упражнява суверенни права или юрисдикция в съответствие с международното право.

5. Понятието "свободно конвертируема валута" означава валутата, която е широко използвана за извършване на плащания при международни сделки и широко обменяна на основните международни валутни пазари.

ЧЛЕН 2

Насърчаване и защита на инвестициите

1. Всяка Договаряща се Страна ще насърчава и създава благоприятни условия за инвеститорите на другата Договаряща се Страна да извършват инвестиции на нейна територия и ще допуска такива инвестиции в съответствие със своите закони и разпоредби.

2. На инвестициите от инвеститори на едната Договаряща се Страна ще бъде предоставено, по всяко време, справедливо и безпристрастно третиране и ще се ползват от пълна защита и сигурност на територията на другата Договаряща се Страна.

3. Нито една Договаряща се Страна няма, по какъвто и да било начин, да накърнява с дискриминационни мерки експлоатацията, управлението, поддържането, ползването, владеенето или разпореждането с инвестициите на нейна територия от инвеститори на другата Договаряща се Страна.

ЧЛЕН 3

Национален режим и режим на най-облагодетелствана нация

1. Всяка Договаряща се Страна ще предоставя на своята територия на инвестициите и приходите на инвеститорите от другата Договаряща се Страна, третиране, което е справедливо и безпристрастно и е не по-малко благоприятно, от това което тя предоставя

на инвестициите и приходите на своите собствени инвеститори или на инвестициите и приходите на инвеститори на която и да е трета държава.

2. Всяка Договаряща се Страна ще предоставя на своята територия на инвеститорите на другата Договаряща се Страна, третиране, по отношение на управлението, поддържането, ползването, владеенето или разпореждането с техните инвестиции, което е справедливо и безпристрастно и не по-малко благоприятно от това, което тя предоставя на своите собствени инвеститори или на инвеститорите на която и да е трета държава.

3. Разпоредбите на алинеи 1 и 2 от този Член няма да се тълкуват като задължаващи едната Договаряща се Страна да предостави на инвеститорите на другата Договаряща се Страна предимството от третиране, преференция или привилегия, които могат да бъдат предоставени на първата Договаряща се Страна по силата на:

(a) митнически съюз или зона за свободна търговия или обща външна тарифна зона на икономически съюз или валутно споразумение или други форми на регионално сътрудничество, по които някоя от Договарящите се Страни е или може да стане страна; или

(b) международна спогодба или споразумение, отнасящи се изцяло или преимуществено до данъчното облагане.

ЧЛЕН 4

Отчуждаване

1. Инвестициите на инвеститорите на едната Договаряща се Страна няма да бъдат национализирани, отчуждавани или по друг начин подлагани на всякакви други мерки, чиито резултат е равен на национализация или отчуждаване (наричани по-нататък "отчуждаване"), на територията на другата Договаряща се Страна, освен в обществен интерес и срещу незабавно, справедливо и ефективно обезщетение. Отчуждаването ще бъде извършено на недискриминационна основа и в съответствие със законовите процедури.

2. Това обезщетение ще възлиза на справедливата пазарна стойност на отчуждените инвестиции непосредствено преди извършването на отчуждаването или преди предстоящото отчуждаване да е станало публично известно, което е по-рано, ще включва лихва по приложимия търговски лихвен процент от датата на отчуждаването до датата на плащане и ще бъде извършено без неоправдано забавяне, ще бъде ефективно реализуемо и свободно преводимо. И в двата случая на отчуждаване и на обезщетение ще бъде предоставено третиране не по-малко благоприятно от това, което Договарящата се Страна предоставя на своите собствени инвеститори или на инвеститори от която и да е трета държава.

3. Инвеститорите на едната Договаряща се Страна, засегнати от отчуждаването, ще имат право на незабавно разглеждане от съдебен или друг независим орган на другата Договаряща се Страна на техния случай и на оценката на техните инвестиции, в съответствие с принципите, установени в този Член.

4. Когато Договарящата се Страна отчужди имущество на дружество, което е създадено или учредено, съгласно нейните закони и разпоредби и в което инвеститори на другата Договаряща се Страна участват или притежават акции или облигации, ще се прилагат разпоредбите на този Член.

ЧЛЕН 5

Обезщетение за загуби

1. На инвеститорите на едната Договаряща се Страна, чиито инвестиции претърпят загуби дължащи се на война или друг въоръжен конфликт, извънредно национално положение, въстание, бунт, размирици или други подобни ситуации на територията на другата Договаряща се Страна, ще бъде предоставено от последната Договаряща се Страна третиране, по отношение на реституция, обезщетение, компенсация или друга форма на уреждане, не по-малко благоприятно от това, което последната Договаряща се Страна предоставя на своите собствени инвеститори или на инвеститори на която и да е трета държава. Произтичащите плащания ще бъдат свободно преводими без неоправдано забавяне.

2. Без да е в противоречие с алинея 1 от този Член, на инвеститорите на една Договаряща се Страна, които в някоя от ситуациите, посочени в тази алинея претърпят загуби на територията на другата Договаряща се Страна, произтичащи от:

(a) реквизиране на тяхното имущество от нейните въоръжени сили или власти; или

(b) разрушаване на тяхното имущество от нейните въоръжени сили или власти, което не е било причинено от военна операция или не се е изисквало от необходимостта на ситуацията,

ще бъде дадено обезщетение или адекватна компенсация не по малко благоприятна от тази, която ще бъде дадена при същите условия на инвеститор на другата Договаряща се Страна или на инвеститор на която и да е трета държава. Произтичащите плащания ще бъдат свободно преводими без неоправдано забавяне.

ЧЛЕН 6

Преводи

1. Всяка Договаряща се Страна ще гарантира на инвеститорите на другата Договаряща се Страна, свободния превод на техните инвестиции и приходи. Тези преводи ще включват, по-специално, но не изключително:

(a) чистата печалба, прираста на капитала, дивиденти, лихва, хонорари, такси и всякакви други текущи доходи, получени от инвестиции;

(b) приходи, получени от продажбата или пълната или частична ликвидация на инвестиции;

(c) суми по изплащане на заеми, свързани с инвестиции;

(d) заплатите на гражданите на другата Договаряща се Страна, които са допуснати да работят във връзка с инвестиция на нейна територия;

(e) допълнителни суми необходими за поддържането или развитието на съществуващите инвестиции;

(f) суми, използвани за управлението на инвестиция на територията на другата Договаряща се Страна; и

(g) обезщетението съгласно Членове 4 и 5.

2. Без да е в противоречие с разпоредбите на алинея 1 на този Член, инвеститорите на другата Договаряща се Страна ще изпълнят финансовите си задължения, и между другото плащането на данъци на територията на първата Договаряща се Страна в съответствие с нейните закони и разпоредби.

3. Всички преводи съгласно този договор ще се извършват в свободно конвертируема валута, без неоправдано ограничение и забавяне, по пазарния обменен курс, преобладаващ на датата на превода.

ЧЛЕН 7

Суброгация

Договаряща се Страна или упълномощена от нея агенция, която по силата на гаранция, дадена за инвестиция направена на територията на другата Договаряща се Страна, извърши плащане на един от своите собствени инвеститори, ще бъде оправомощена, по силата на суброгация, да упражнява правата и исковете, както и да поеме задълженията на въпросния инвеститор. Суброгираната Договаряща се Страна или упълномощената от нея агенция не може да придобива права или да поема задължения по-големи от тези на обезпечения инвеститор.

ЧЛЕН 8

Разрешаване на инвестиционни спорове между Договаряща се Страна и инвеститор на другата Договаряща се Страна.

1. Всеки спор между Договаряща се Страна и инвеститор на другата Договаряща се Страна, произтичащ от заявено нарушаване на задължение съгласно този договор, включително отчуждаването и национализацията на инвестиции, доколкото е възможно, ще се разрешава от страните по спора по приятелски начин.

2. Ако такъв спор не може да бъде разрешен в рамките на три (3) месеца от датата на която едната от страните по спора е поискала приятелско разрешаване, засегнатият инвеститор може да отнесе спора пред компетентния съд на Договарящата се Страна, на чиято територия е направена инвестицията или алтернативно пред Международния център за разрешаване на инвестиционни спорове (ICSID) създаден съгласно Конвенцията за уреждане на инвестиционни спорове между държави и граждани на други държави, подписана във Вашингтон на 18 март 1965 г. или пред арбитражен съд ад хок, съставен съгласно Арбитражните правила на Комисията на Организацията на обединените нации по Международно търговско право (UNCITRAL).

3. Решението ще бъде окончателно и задължително за страните по спора. Всяка Договаряща се Страна ще осигури признаването и привеждането в сила на решението съобразно съответните закони и разпоредби.

ЧЛЕН 9

Разрешаване на спорове между Договарящите се Страни

1. Спорове между Договарящите се Страни относно тълкуването или прилагането на този договор, ще се разрешават, ако е възможно, чрез консултации и преговори.

2. Ако спора не може да бъде разрешен, в рамките на три (3) месеца, той ще бъде отнесен, по искане на някоя от Договарящите се Страни, пред арбитражен съд съгласно разпоредбите на този Член.

3. Арбитражният съд ще се съставя за всеки отделен случай по следния начин. В рамките на два (2) месеца от получаване на молбата за арбитраж, всяка Договаряща се Страна ще назначи един член на съда. Тези двама членове ще определят след това гражданин на трета държава, който, с одобрението на двете Договарящи се Страни ще бъде назначен за Председател на съда (наричан по-нататък "Председател"). Председателят ще бъде назначен в рамките на три (3) месеца от датата на назначаване на другите двама членове.

4. Ако в рамките на сроковете определени в алинея 3 на този Член необходимите назначения не бъдат извършени, може да бъде отправено искане до Президента на Международния съд да извърши назначенията. Ако той е гражданин на някоя от Договарящите се Страни или ако по някакъв друг начин е възпрепятстван да изпълни упоменатата функция, Вице-Президентът ще бъде поканен да извърши назначенията. Ако Вице-Президентът също е гражданин на някоя от Договарящите се Страни или е възпрепятстван да изпълни упоменатата функция, следващия по старшинство член на Международния съд, който не е гражданин на някоя от Договарящите се Страни, ще бъде поканен да извърши назначенията.

5. Арбитражният съд взема решението си на базата на разпоредбите на този договор и на други подобни договори, сключени между Договарящите се Страни, както и на общоприетите принципи на международното право. Арбитражният съд взема решението си с мнозинство на гласовете. Това решение е задължително. Всяка Договаряща се Страна поема разходите за своя собствен арбитър и за своето представяне в арбитражния процес; разходите на Председателя и останалите разходи се поемат по равно от Договарящите се Страни. Съдът, обаче, може в своето решение да определи по-голяма част от разходите да бъде поета от едната от Договарящите се Страни. Съдът определя своя собствена процедура.

ЧЛЕН 10

ОБХВАТ НА ДОГОВОРА

Този Договор ще се прилага за всички инвестиции, независимо дали са направени преди или след неговото влизане в сила, но няма да се прилага за спорове, относно инвестиции, които са били уредени преди влизането му в сила.

ЧЛЕН 11

Прилагане на други правила и специални разпоредби

1. Когато даден въпрос се регулира едновременно в този договор и от друг международен договор, по който двете Договарящи се Страни са страни, нищо в този договор няма да

възпрепятства едната Договаряща се Страна или някой от нейните инвеститори, който притежава инвестиция на територията на другата Договаряща се Страна да се възползва от предимството на разпоредбите, които са по-благоприятни за неговия случай.

2. Ако третирането предоставено от едната Договаряща се Страна на инвеститори на другата Договаряща се Страна в съответствие с нейните закони и разпоредбите или други специфични постановления или договорености е по-благоприятно от предоставеното в този договор, ще се предоставя по-благоприятното третиране.

ЧЛЕН 12

Консултации

Всяка Договаряща се Страна може да предложи на другата Договаряща се Страна да се консултира по въпроси относно тълкуването или прилагането на този договор. Другата Договаряща се Страна ще разгледа благоприятно предложението и ще предостави подходяща възможност за провеждането на тези консултации.

ЧЛЕН 13

Влизане в сила, продължителност и прекратяване

1. Всяка от Договарящите се Страни ще уведоми другата за изпълнението на изискващите се от закона процедури за привеждането на договора в сила. Този Договор ще влезе в сила тридесет (30) дни след датата на второто уведомление.

2. Този договор ще остане в сила за период от десет (10) години и ще продължи да бъде в сила след това освен ако една (1) година преди изтичането на първоначалния или последващия период едната Договаряща се Страна не уведоми писмено другата за намерението си да прекрати договора.

3. По отношение на инвестициите направени преди прекратяването на този договор, разпоредбите на този договор ще продължат да бъдат в сила за по-нататъшен период от петнадесет (15) години от датата на прекратяване.

В УВЕРЕНИЕ НА КОЕТО, долуподписаните, надлежно упълномощени за това от техните съответни Правителства, подписаха този Договор.

Съставен в два оригинални екземпляра в ....София..... на ...12....ден от ....ЮНИ.....2006г. на корейски, български и английски език, като всички текстове са еднакво автентични. В случай на различия при тълкуването, меродавен ще бъде английският текст.

ЗА ПРАВИТЕЛСТВОТО НА РЕПУБЛИКА КОРЕЯ:

ЗА ПРАВИТЕЛСТВОТО НА РЕПУБЛИКА БЪЛГАРИЯ:

ПРОТОКОЛ

При подписването на Договора между правителството на Република Корея и правителството на Република България за взаимно насърчаване и защита на инвестициите, долуподписаните постигнаха съгласие по следните разпоредби, които представляват неразделна част от Договора:

По отношение на Член 3:

(a) Правителството на Република Корея взема под внимание, че придобиването на право на собственост върху земя на територията на Република България от чуждестранни физически и юридически лица се регулира от Конституцията на Република България.

(b) Правителството на Република България взема под внимание, че съгласно Закона за придобиване на земя от чужденци на Република Корея, когато на физически или юридически лица установени съгласно законите на Република Корея или на правителството на Република Корея е забранено да придобива или прехвърля земя на територията на чуждестранна държава, на физическите или юридически лица или на правителството на тази държава може да бъде забранено да придобива или прехвърля земя на територията на Република Корея.

(c) За по голяма яснота се подразбира, че след присъединяването на Република България към Европейския съюз, третирането предоставено съгласно този Договор няма да се прилага към всички съществуващи или бъдещи предимства, предоставени от Република България, по силата на това членство, на нейните собствени инвеститори или на инвеститорите от Страните-членки.

В УВЕРЕНИЕ НА КОЕТО, долуподписаните, надлежно упълномощени за това от техните съответни Правителства, подписаха този Договор.

Съставен в два оригинални екземпляра в ....София..... на ..12.....ден от .....юни.....2006г. на корейски, български и английски език, като всички текстове са еднакво автентични. В случай на различия при тълкуването, меродавен ще бъде английският текст.

ЗА ПРАВИТЕЛСТВОТО НА РЕПУБЛИКА КОРЕЯ:

ЗА ПРАВИТЕЛСТВОТО НА РЕПУБЛИКА БЪЛГАРИЯ:

[ENGLISH TEXT – TEXTE ANGLAIS]

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

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

Desiring to develop the economic cooperation between both States,

Intending to encourage and create favourable conditions for investments of investors of either State in the territory of the other State on the basis of equality and mutual benefit, and

Recognizing that the promotion and reciprocal protection of investments under the present Agreement stimulates initiative in this field,

Have agreed as follows:

ARTICLE 1
Definitions

For the purposes of this Agreement:

1. The term "investments" shall mean every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party and 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 and similar rights;
   (b) shares in, stocks and debentures of, and any other form of participation in a company or any business enterprise and rights or interest derived therefrom;
   (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 goodwill;
   (e) any right conferred by law or under a contract and any licenses and permits pursuant to law, including the right to explore, extract, cultivate or exploit natural resources;

Any alteration of the form in which assets are invested shall not affect their classification as investment, provided that such alteration is not in contradiction with the laws of the relevant Contracting Party.

2. The term "investor" shall mean:
   (a) a natural person who is a national of one Contracting Party in accordance with its legislation and invests in the territory of the other Contracting Party;
   (b) any company, organization, partnership or other form of association incorporated or constituted in accordance with the legislation of one Contracting Party and having its seat in the territory of this Contracting Party, irrespective of its juridical personality, which invests in the territory of the other Contracting Party.

3. The term "returns" shall mean amounts yielded by an investment and, in particular though not exclusively, includes profits, interest, capital gains, shares, dividends, royalties and all kind of fees.

4. The term "territory" shall mean:
   (a) with regard to 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 of the Republic of Korea, over which the Republic of Korea exercises, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploration and exploitation of the natural resources of such areas;
   (b) with regard to the Republic of Bulgaria: the territory under the sovereignty of the Republic of Bulgaria, including the territorial sea, as well as the continental shelf and the exclusive economic zone over which the Republic of Bulgaria exercises sovereign rights or jurisdiction in conformity with international law.

5. The term "freely convertible currency" shall mean 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 make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. Investments of investors of either 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.

3. Neither Contracting Party shall in any way impair by discriminatory measures the operation, management, maintenance, use, enjoyments or disposal of investments in its territory by investors of the other Contracting Party.

ARTICLE 3
National and Most-Favoured-Nation Treatment

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 favourable 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. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investments, treatment which is fair and equitable and no 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 the 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 customs union or free trade area or a common external tariff area of economic union or a monetary agreement or other forms of regional cooperation to which either of the Contracting Parties is or may become a party; or

(b) any international agreement or arrangement relating wholly or mainly to taxation.

ARTICLE 4
Expropriation

1. Investments of investors of one Contracting Party shall not be nationalized, expropriated or otherwise subjected to any other measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for public purpose and against prompt, adequate and effective compensation. The expropriation shall be carried out on a non-discriminatory basis in accordance with legal procedures.

2. Such compensation shall amount to the fair market value of the expropriated investments immediately before expropriation was taken or before impending expropriation became public knowledge, whichever is the earlier, shall include interest at the applicable commercial rate from the date of expropriation until the date of payment and shall be made without undue delay, be effectively realizable and be freely transferable. In both expropriation and compensation, treatment no less favourable than that which the Contracting Party accords to its own investors or to investors of any third State shall be accorded.

3. 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.

4. Where a 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 participate or own shares or debentures, the provision of this Article shall be applied.

ARTICLE 5
Compensation for Losses

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. Resulting payments shall be freely transferable without undue delay.

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

shall be accorded restitution or adequate compensation no less favourable 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. Resulting payments shall be freely transferable without undue delay.

ARTICLE 6

Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, the free transfer of their investments and returns. Such transfers shall include, in particular, though not exclusively:

(a) net profit, capital gains, dividends, interest, royalties, fees and any other current income accruing from investments;

(b) proceeds accruing from the sale or the total or partial liquidation of investments;

(c) funds in repayment of loans related to investments;

(d) earnings of nationals of the other Contracting Party who are allowed to work in connection with investments in its territory;

(e) additional funds necessary for the maintenance or development of the existing investments;

(f) amounts spent for the management of the investment in the territory of the other Contracting Party; and

(g) compensation pursuant to Articles 4 and 5.

2. Without prejudice to the provisions of paragraph 1 of this Article, investors of the other Contracting Party shall fulfill financial obligations, *inter alia* payment of taxes, in the territory of one Contracting Party in accordance with its laws and regulations.

3. All transfers under this Agreement shall be made in a freely convertible currency, without undue restriction and delay, at the market exchange rate, prevailing on the date of the transfer.

ARTICLE 7

Subrogation

A Contracting Party or its designated agency having, by virtue of a guarantee given for an investment made in the territory of the other Contracting Party, made payment to one of its own investors shall, under a subrogation, be entitled to exercise the rights and claims as well as to assume the obligations of the said investor. The subrogated Contracting Party or its designated agency cannot acquire rights or assume obligations greater than those of the ensured investor.

ARTICLE 8

Settlement of Investment 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 derived from an alleged breach of an obligation under this Agreement including expropriation or nationalization of investments shall, as far as possible, be settled by the parties to the dispute in an amicable way.

2. If such a dispute cannot be settled within three (3) months from the date either party to the dispute requested amicable settlement, the investor concerned may submit the dispute to the competent court of the Contracting Party in whose territory the investment was made or alternatively either to the International Center for Settlement of Investment Disputes (ICSID) set up by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done in Washington, March 18th, 1965 or to an ad-hoc arbitral tribunal to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. The award 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.

ARTICLE 9

Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultations or negotiations.

2. If the dispute cannot be settled within three (3) months, 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 (2) months 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 who, on approval of the two Contracting Parties, shall be appointed Chairman of the Tribunal (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three (3) 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 to the President of the

International Court of Justice to make the appointments. If he happens to be a national of either Contracting Party or if 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 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, shall be invited to make the appointments.

5. The arbitral tribunal shall reach its award on the basis of the provisions of this Agreement and of other similar agreements concluded between the Contracting Parties, as well as of the general principles of international law. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceeding; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The Tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties. The arbitral tribunal shall determine its own procedure.

ARTICLE 10

Scope of Agreement

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

ARTICLE 11

Application of Other Rules and Special Commitments

1. Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting Parties are parties, 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 from whichever rules are the most favourable to his case.

2. 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 12
Consultations

Each Contracting Party may propose to the other Contracting Party to consult on any matter concerning the interpretation or application of this Agreement. The other Contracting Party shall accord sympathetic consideration to and shall afford adequate opportunity for such consultation.

ARTICLE 13
Entry into Force, Duration and Termination

1. Each of the Contracting Parties shall notify to the other the completion of the procedures required by its law for bringing this Agreement into force. This Agreement shall enter into force thirty (30) days after the date of the second notification.

2. This Agreement shall remain in force for a period of ten (10) years and shall continue in force thereafter unless, one (1) year before the expiry of the initial or any subsequent period, either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

3. In respect of investments made prior to the termination of this Agreement the provisions of this Agreement shall continue to be effective for a period of fifteen (15) 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 Sofia on this 12 day of June, 2006, in the Korean, Bulgarian 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 BULGARIA

PROTOCOL

At the signing of the Agreement between the Government of the Republic of Korea and the Government of the Republic of Bulgaria for the Reciprocal Promotion and Protection of Investments, the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement:

With respect to Article 3:

(a) The Government of the Republic of Korea takes note that obtaining ownership over land in the territory of the Republic of Bulgaria by foreign natural and judicial persons is subject to the Constitution of the Republic of Bulgaria.

(b) The Government of the Republic of Bulgaria takes note that according to the Foreigner's Land Acquisition Act of the Republic of Korea, where a natural or juridical person established under the laws of the Republic of Korea or the Government of the Republic of Korea is prohibited from acquiring or transferring the land in the territory of a foreign country, natural or juridical persons or the government of that country may be prohibited from acquiring or transferring the land in the territory of the Republic of Korea.

(c) For greater clarity, it is understood that after the accession of the Republic of Bulgaria to the European Union, the treatment accorded under this Agreement shall not apply to all actual or future advantages accorded by the Republic of Bulgaria to its own investors or to investors of the Member-States, by virtue of this membership.

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

DONE in duplicate at Sofia on this 12 day of June, 2006, in the Korean, Bulgarian 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 BULGARIA

[KOREAN TEXT – TEXTE CORÉEN]

대한민국 정부와 불가리아공화국 정부 간의 투자의 상호 증진 및 보호에 관한 협정

대한민국 정부와 불가리아공화국 정부(이하 "체약당사자"라 한다)는,

양국 간의 경제협력을 발전시키기를 희망하고,

평등과 호혜의 기초 위에서 일국의 투자자에 의한 타방 국가의 영역 안의 투자에 유리한 여건을 장려하고 조성하기를 의도하며,

이 협정에 따른 투자의 증진 및 상호 보호가 이 분야에서 새로운 선도적 역할을 촉진할 것임을 인식하여,

다음과 같이 합의하였다.

제 1 조
정 의

이 협정의 목적상,

1. "투자"라 함은 일방체약당사자의 투자자가 타방체약당사자의 영역 안에 투자한 모든 종류의 자산을 말하며, 특히 다음 각목의 사항을 포함하나 이에 한정되지 아니한다.

가. 동산·부동산과 저당권·유치권·질권 및 이와 유사한 권리 등 그 밖의 재산권

나. 회사와 기업의 지분·주식·회사채 및 그 밖의 형태의 참여와 이로부터 발생하는 권리 또는 이익

다. 금전청구권 또는 투자와 관련된 경제적 가치가 있는 이행청구권

라. 저작권·상표권·특허권·의장·기술공정·노하우·영업비밀·상호권을 포함하는 지적재산권 및 영업신용

마. 천연자원의 탐사·추출·개간 또는 개발을 위한 권리를 포함하여 법률 또는 계약에 의하여 부여되는 권리 및 법률에 따른 면허와 허가

자산이 투자되어 그 형태에 어떠한 변경이 있더라도, 이러한 변경이 관련 체약당사자의 법에 위반되지 아니하는 경우, 이는 투자로서의 성격에 영향을 미치지 아니한다.

2. "투자자"라 함은 다음을 말한다.

가. 일방체약당사자의 법령에 따라 그 체약당사자의 국민으로서 타방체약당사자의 영역에서 투자하는 자연인

나. 법인격에 관계없이, 일방체약당사자의 법령에 따라 설립되거나 조직되고 그 체약당사자의 영역에 소재하면서 타방체약당사자의 영역에 투자하는, 회사·기관·조합 또는 다른 형태의 협회

3. "수익"이라 함은 투자에 의하여 발생한 금액을 말하며, 특히 이윤·이자·자본이득·배당금·사용료 및 모든 종류의 수수료를 포함하나 이에 한정되지 아니한다.

4. "영역"이라 함은 다음을 말한다.

가. 대한민국에 대하여는 대한민국의 영역와 대한민국이 국제법에 따라 그러한 지역의 천연자원을 탐사·개발할 목적으로 주권적 권리 및 관할권을 행사하는 영해의 외측한계선에 인접한 해저 및 하층토를 포함하는 수역을 말한다.

나. 불가리아공화국에 대하여는 영해 및 불가리아 공화국이 국제법에 합치하여 주권적 권리 및 관할권을 행사하는 대륙붕이나 배타적 경제수역을 포함하는 불가리아 공화국의 주권이 미치는 영역을 말한다.

5. "자유태환성통화"라 함은 국제거래를 위한 지불에 광범위하게 사용되며 주요 국제외환시장에서 광범위하게 교환되는 통화를 말한다.

제 2 조
투자의 증진과 보호

1. 각 체약당사자는 타방체약당사자의 투자자가 자국의 영역 안에서 투자를 하는 데 유리한 여건을 장려하고 조성하며, 자국의 법령에 따라 그러한 투자를 허용한다.

2. 일방체약당사자의 투자자가 행한 투자는 타방체약당사자의 영역 안에서 항상 공정하고 공평한 대우를 부여받으며, 완전한 보호와 안전을 향유한다.

3. 어느 일방체약당사자도 타방체약당사자의 투자자가 자국의 영역 안에서 행한 투자의 운용·관리·유지·사용·향유 또는 처분을 차별적 조치에 의하여 어떠한 방식으로도 저해하지 아니한다.

제 3 조
내국민대우 및 최혜국대우

1. 각 체약당사자는 자국의 영역 안에서 타방체약당사자의 투자자의 투자 및 수익에 대하여 공정하고 공평하며, 자국의 투자자의 투자 및 수익 또는 제3국의 투자자의 투자 및 수익에 대하여 부여하는 대우보다 불리하지 아니한 대우를 부여한다.

2. 각 체약당사자는 자국의 영역 안에서 타방체약당사자의 투자자에게 그들 투자의 관리·유지·사용·향유 또는 처분과 관련하여 공정하고 공평하며, 자국의 투자자 또는 제3국의 투자자에게 부여하는 대우보다 불리하지 아니한 대우를 부여한다.

3. 제1항 및 제2항의 규정은 일방체약당사자가 다음 각목에 의한 대우·특혜 또는 특권의 이익을 타방체약당사자의 투자자에게까지 확대하는 의무를 부여하는 것으로 해석되지 아니한다.

가. 일방체약당사자가 당사자이거나 당사자가 될 수 있는 어떠한 관세동맹, 자유무역지대, 경제동맹의 공동외부관세지역, 통화협정 또는 다른 형태의 지역협력

나. 전적으로 또는 주로 과세와 관련된 국제협정 또는 약정

제 4 조
수 용

1. 일방체약당사자의 투자자의 투자는 공공의 목적을 위하고, 신속·충분·유효한 보상을 하는 경우를 제외하고는 타방체약당사자의 영역 안에서 국유화되거나, 수용되거나 또는 국유화 또는 수용에 상응하는 효과를 가지는 그 밖의 다른 조치(이하 "수용"이라 한다)를 당하지 아니한다. 수용은 비차별적 기초 위에서 적법한 절차에 따라 이루어진다.

2. 그러한 보상은 수용이 이루어지기 직전 또는 수용이 임박하였음이 공공연하게 알려지기 직전 중 보다 이른 시기의 수용된 투자의 공정한 시장가치에 상당하고, 수용일부터 지급일까지의 적용가능한 상업 이자율에 의한 이자를 포함하며, 그리고 부당한 지체 없이 지급되고 유효하게 실시되며 자유롭게 송금될 수 있어야 한다. 수용 및 보상 모두에 있어서 그 체약당사자가 자국의 투자자 또는 제3국의 투자자에게 부여하는 것보다 불리하지 아니한 대우가 부여된다.

3. 수용에 의하여 영향을 받은 일방체약당사자의 투자자는 이 조에 규정된 원칙에 따라 자신의 사안 및 투자의 가치산정에 대하여 타방체약당사자의 사법당국 또는 그 밖의 독립된 당국에 의한 신속한 심사를 받을 권리를 가진다.

4. 일방체약당사자가 자국의 법령에 의하여 조직되거나 설립된 회사로서 타방체약당사자의 투자자가 참여하거나 지분·회사채를 소유한 회사의 자산을 수용한 경우, 이 조의 규정이 적용된다.

제 5 조
손실보상

1. 일방체약당사자의 투자자는, 자신이 행한 투자가 타방체약당사자의 영역 안에서 전쟁이나 그 밖의 무력충돌·국가비상사태·폭동·반란·소요 또는 그 밖의 이와 유사한 사태로 인하여 손실을 입은 경우, 그 손실에 대한 원상회복·배상·보상 또는 다른 형태의 해결에 관하여 그 타방체약당사자가 자국의 투자자 또는 제3국의 투자자에 대하여 부여하는 것보다 불리하지 아니한 대우를 타방체약당사자로부터 부여받는다. 이에 따른 지급금은 부당한 지체 없이 자유로이 송금될 수 있어야 한다.

2. 제1항을 저해함이 없이, 일방체약당사자의 투자자는 제1항에 언급된 사태에서 다음 각목의 사항으로부터 발생하는 손실을 타방체약당사자의 영역 안에서 입은 경우, 그 투자자는 동일한 상황 하에서 타방체약당사자의 투자자 또는 제3국의 투자자에게 부여되는 것보다 불리하지 아니하게 원상회복 또는 충분한 보상을 부여받는다. 이에 따른 지급금은 부당한 지체 없이 자유로이 송금될 수 있어야 한다.

가. 타방체약당사자의 군대 또는 당국에 의한 투자자 재산의 징발, 또는

나. 전투행위에 기인하지 아니하거나 그 사태의 필요성에 의하여 요구되지 아니하였던 것으로서 타방체약당사자의 군대 또는 당국에 의한 투자자 재산의 파괴

제 6 조
송 금

1. 각 체약당사자는 타방체약당사자의 투자자에게 투자 및 수익의 자유로운 송금을 보장한다. 그러한 송금은 특히 다음 각목의 사항을 포함하나 이에 한정되지 아니한다.

가. 투자로부터 발생하는 순수익 · 자본이득 · 배당금 · 이자 · 사용료 · 수수료 및 그 밖의 경상소득

나. 투자의 매각 또는 전면적 · 부분적 청산으로부터 발생하는 수익금

다. 투자와 관련된 대여금의 상환자금

라. 각 체약당사자의 영역 안에서 투자와 관련하여 근로가 허용된 타방체약당사자의 국민의 소득

마. 기존 투자의 유지 또는 개발을 위하여 필요한 추가자금

바. 타방체약당사자 또는 제3국의 영역 안에서 투자의 관리를 위하여 사용되는 금액

사. 제4조 및 제5조의 규정에 의한 보상금

2. 제1항을 해함이 없이, 일방체약당사자의 투자자는 타방체약당사자의 영역에서 타방체약당사국의 법령에 따라 세금 납부와 같은 재정적 의무를 충실히 한다.

3. 이 협정에 따른 모든 송금은 자유태환성통화로 부당한 제한이나 지체 없이, 송금일에 유효한 시장환율로 이루어진다.

제 7 조
대위변제

일방체약당사자 또는 그 지정기관은 타방체약당사자의 영역 안에서 행한 투자에 대하여 부여된 보증에 따라 자국의 투자자에게 변제한 경우, 대위변제에 의하여 그 투자자의 권리와 청구권을 행사할 수 있는 권한을 가지며 또한 의무를 부담한다. 대위변제를 한 체약당사자 또는 그 지정기관은 투자자의 원래의 권리 또는 의무보다 큰 권리를 취득하거나 의무를 부담하지 아니한다.

제 8 조
일방체약당사자와 타방체약당사자의 투자자간의 투자분쟁해결

1. 투자의 수용이나 국유화를 포함하여 이 협정에 따른 의무의 위반으로부터 발생하는 일방체약당사자와 타방체약당사자의 투자자간의 분쟁은 가능한 한 분쟁당사자간에 우호적인 방법으로 해결한다.

2. 일방 분쟁당사자가 우호적인 해결을 요청한 날로부터 3월 이내에 분쟁이 해결되지 못하는 경우, 관련 투자자는 투자가 행해진 영역의 체약당사자의 권한있는 법원에 분쟁을 회부하거나, 또는 그 대안으로 1965년 3월 18일에 워싱턴에서 작성된 국가와 타방국가 국민간의 투자분쟁의 해결에 관한 협약에 의하여 설립된 국제투자분쟁해결본부(이하 "ICSID"라 한다) 또는 국제연합 국제무역법위원회의 중재규칙에 따라 설립되는 임시중재재판소에 회부할 수 있다.

3. 판정은 분쟁당사자에게 최종적이며 구속력을 가진다. 각 체약당사자는 자국의 관계법령에 따라 판정의 승인 및 집행을 보장한다.

제 9 조
체약당사자간 분쟁의 해결

1. 이 협정의 해석 또는 적용에 관한 체약당사자간의 분쟁은 가능한 한 협의 또는 협상에 의하여 해결된다.

2. 분쟁이 3월 이내에 해결되지 못하는 경우, 그 분쟁은 일방체약당사자의 요청에 의하여 이 조의 규정에 따라 중재재판소에 회부된다.

3. 이러한 중재재판소는 다음의 방법으로 사안별로 구성된다. 각 체약당사자는 중재재판을 위한 요청의 접수일로부터 2월 이내에 1인의 중재인을 임명한다. 이러한 2인의 중재인은 제3국의 국민인 1인을 선정하고, 동인은 중재재판소의 장(이하 "중재재판소의 장"이라 한다)으로 임명된다. 중재재판소의 장은 다른 2인의 중재인의 임명일로부터 2월 이내에 임명된다.

4. 제3항에 명시된 기간 내에 필요한 임명이 이루어지지 아니한 경우 국제사법재판소 소장에게 그러한 임명을 요청할 수 있다. 국제사법재판소 소장이 일방체약당사자의 국민이거나 달리 위의 임무를 수행할 수 없을 경우에는 국제사법재판소 부소장에게 그러한 임명을 요청한다. 국제사법재판소 부소장도 일방체약당사자의 국민이거나 위의 임무를 수행할 수 없는 경우에는 일방체약당사자의 국민이 아닌 자로서 국제사법재판소의 그 다음 서열의 재판관에게 그러한 임명을 요청한다.

5. 중재재판소는 이 협정의 규정, 양 체약당사자간 체결된 유사한 협정 및 국제법의 일반원칙에 따라 판정을 내린다. 중재재판소는 다수결에 의하여 결정하며, 그러한 결정은 구속력을 가진다. 각 체약당사자는 자국의 중재인에 대한 비용과 중재절차에서 자국을 대리하는 데 대한 비용을 부담한다. 중재재판소의 장에 대한 비용 및 그 밖의 비용은 양 체약당사자가 균등하게 부담한다. 다만, 중재재판소는 결정으로써 양 체약당사자 중 일방이 보다 높은 비율의 비용을 부담하도록 명할 수 있다. 중재재판소는 그 자체의 절차를 결정한다.

제 10 조
협정의 범위

이 협정은 이 협정이 발효되기 전이나 그 후에 이루어진 모든 투자에 대하여 적용된다. 그러나, 이 협정이 발효되기 전에 해결된 투자분쟁에는 적용되지 아니한다.

제 11 조
다른 규칙 및 특정 규정의 적용

1. 어떤 사안이 이 협정과 양 체약당사자가 당사자인 다른 국제협정에 의하며 동시에 규율되는 경우, 이 협정의 어떠한 규정도 일방체약당사자 또는 타방체약당사자의 영역 안에서 투자를 소유하는 일방체약당사자의 투자자가 자신의 사안에 대하여 보다 유리한 규칙을 원용하는 것을 저해하지 아니한다.

2. 일방체약당사자가 타방체약당사자의 투자자에 대하여 자국의 법령이나 다른 특정한 규정 또는 계약에 의하여 부여하는 대우가 이 협정에 의하여 부여되는 대우보다 더 유리한 경우에는 그 유리한 대우가 부여된다.

제 12 조
협 의

각 체약당사자는 이 협정의 해석 또는 적용에 관한 어떠한 사안에 대하여 협의할 것을 타방체약당사자에게 제안할 수 있다. 타방체약당사자는 이러한 협의를 호의적으로 검토하고 충분한 기회를 부여한다.

제 13 조
발효·유효기간 및 종료

1. 일방체약당사자는 이 협정의 발효에 필요한 자국의 법적 절차가 완료되었음을 타방체약당사자에게 통보한다. 이 협정은 나중의 통보일로부터 30일 후에 발효한다.

2. 이 협정은 10년의 기간 동안 유효하며, 일방체약당사자가 타방체약당사자에게 최초 또는 그 이후의 유효기간이 만료되기 1년 전에 이 협정의 종료 의사를 서면으로 통지하지 아니하는 한 그 이후에도 계속 유효하다.

3. 이 협정의 종료 전에 행하여진 투자에 관하여는 이 협정의 규정이 협정의 종료일부터 15년의 기간 동안 더 유효하다.

이상의 증거로, 아래 서명자는 그들 각자의 정부로부터 정당하게 권한을 위임받아 이 협정에 서명하였다.

2006년 6월 12일 소피아 에서 동등하게 정본인 한국어·불가리아어 및 영어로 각 2부씩 작성하였다. 해석상의 차이가 있는 경우에는 영어본이 우선한다.

대한민국 정부를 대표하여

불가리아공화국 정부를 대표하여

의 정 서

대한민국 정부와 불가리아공화국 정부 간의 투자의 상호증진 및 보호에 관한 협정에 서명함에, 양국은 이 협정의 일체를 구성하는 다음 조항에 합의하였다.

제3조와 관련하여,

가. 대한민국 정부는 외국 자연인이나 법인에 의한 불가리아공화국 영역 안에서의 토지 소유가 불가리아공화국의 헌법에 따름을 유의한다.

나. 불가리아공화국 정부는 대한민국 정부의 외국인토지법에 따라 대한민국의 국민, 대한민국의 법에 의하여 설립된 법인 또는 대한민국 정부에 대하여 외국의 영역 안에서 토지의 취득 또는 양도가 금지되는 경우 그 외국의 자연인과 법인 또는 정부는 대한민국의 영역 안에서 토지의 취득 또는 양도가 금지될 수 있음을 유의한다.

다. 보다 명확성을 기하기 위하여, 불가리아공화국이 유럽연합에 가입한 이후 이 협정에 따라 주어지는 대우는 불가리아공화국이 유럽연합 회원국임을 이유로 자국의 투자자 또는 회원국의 투자자에게 부여하는 모든 실제 또는 미래의 혜택에 대하여 적용되지 아니하는 것으로 이해된다.

이상의 증거로, 아래 서명자는 그들 각자의 정부로부터 정당하게 권한을 위임받아 이 의정서에 서명하였다.

2006년 6월 12일 소피아에서 동등하게 정본인 한국어·불가리아어 및 영어로 각 2부씩 작성하였다. 해석상의 차이가 있을 경우에는 영어본이 우선한다.

대한민국 정부를 대표하여

불가리아공화국 정부를 대표하여

[TRANSLATION – TRADUCTION]

ACCORD ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE DE CORÉE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE DE BULGARIE POUR LA PROMOTION ET LA PROTECTION RÉCIPROQUES DES INVESTISSEMENTS

Le Gouvernement de la République de Corée et le Gouvernement de la République de Bulgarie (ci-après dénommés « Parties contractantes »),

Animés du désir de développer la coopération économique entre les deux États,

Soucieux d'encourager et de créer des conditions favorables aux investissements des ressortissants de chacun des deux États sur le territoire de l'autre État, sur la base de l'égalité et de l'avantage mutuel, et

Reconnaissant que la promotion et la protection réciproques des investissements dans le cadre du présent Accord encourageront les initiatives dans ce domaine,

Sont convenus de ce qui suit :

Article premier. Définitions

Aux fins du présent Accord :

1. Le terme « investissements » s'entend de toutes les catégories de biens investis par un investisseur d'une Partie contractante sur le territoire de l'autre Partie contractante et inclut en particulier, mais non exclusivement :

a) les biens meubles et immeubles, ainsi que tous les autres droits de propriété tels qu'hypothèques, liens, droits de gage et droits similaires;

b) les actions, parts et autres formes de participation au capital d'une société ou entreprise commerciale et les droits ou intérêts qui en découlent;

c) les créances pécuniaires et les créances portant sur toute prestation présentant une valeur économique et associées à un investissement;

d) les droits de propriété intellectuelle, y compris les droits d'auteur, marques déposées, brevets, modèles et dessins industriels, procédés techniques, savoir-faire, noms commerciaux et fonds commerciaux;

e) tout droit conféré par la loi ou en vertu d'un contrat, et toute licence et tout permis conformément à la loi, y compris le droit d'explorer, d'extraire, de cultiver ou d'exploiter les ressources naturelles;

Toute modification de la forme sous laquelle les avoirs sont investis n'affecte en rien leur caractère d'investissement, à condition que cette modification ne soit pas en contradiction avec les lois de la Partie contractante concernée.

2. Le terme « investisseurs » s'entend :

a) d'une personne physique qui est un ressortissant d'une Partie contractante conformément à sa législation et qui investit dans le territoire de l'autre Partie contractante;

b) de toute entreprise, toute organisation, tout partenariat ou toute autre forme d'association créés ou établis conformément à la législation d'une des Parties contractantes et dont le siège social est établi sur le territoire de cette Partie contractante, quelle que soit sa personnalité juridique, et qui investit sur le territoire de l'autre Partie contractante.

3. Le terme « rendements » s'entend des montants rapportés par un investissement et inclut notamment, mais non exclusivement, les bénéfices, intérêts, plus-values, actions, dividendes, redevances et toutes sortes de droits.

4. Le terme « territoire » s'entend :

a) en ce qui concerne la République de Corée, du territoire de la République de Corée, ainsi que des zones maritimes, y compris les fonds marins et le sous-sol qui jouxtent la limite externe de la mer territoriale de la République de Corée, sur lesquelles celle-ci exerce, conformément au droit international, ses droits souverains et sa juridiction aux fins de la prospection et de l'exploitation des ressources naturelles contenues dans ces zones;

b) en ce qui concerne la République de Bulgarie, du territoire sous la souveraineté de la République de Bulgarie, y compris la mer territoriale, ainsi que le plateau continental et la zone économique exclusive, sur lesquels la République de Bulgarie exerce ses droits souverains ou sa juridiction conformément au droit international.

5. L'expression « monnaie librement convertible » s'entend d'une monnaie largement utilisée pour effectuer les paiements relatifs à des transactions internationales et largement échangée sur les principales places boursières internationales.

Article 2. Promotion et protection des investissements

1. Chaque Partie contractante encourage les investisseurs de l'autre Partie contractante à investir sur son territoire, leur crée les conditions favorables pour ce faire, et accepte de tels investissements conformément à ses lois et règlements en vigueur.

2. Les investissements effectués par les investisseurs de l'une ou l'autre Partie contractante jouissent à tout moment, sur le territoire de l'autre Partie contractante, d'un traitement juste et équitable, ainsi que d'une protection et d'une sécurité pleine et entière.

3. Ni l'une ni l'autre des Parties contractantes ne compromet, par des mesures discriminatoires, la gestion, la conservation, l'usage, la jouissance ou la cession d'investissements réalisés sur son territoire par des investisseurs de l'autre Partie contractante.

Article 3. Traitement national et traitement de la nation la plus favorisée

1. Chaque Partie contractante accorde, sur son territoire, aux investissements et aux revenus des investisseurs de l'autre Partie contractante un traitement juste et équitable et au moins aussi favorable que celui qu'elle accorde aux investissements et aux revenus de ses propres investisseurs ou aux investissements et revenus des investisseurs de tout État tiers.

2. Chaque Partie contractante accorde sur son territoire aux investisseurs de l'autre Partie contractante, en ce qui concerne la gestion, l'entretien, l'utilisation, la jouissance ou la disposition de leurs investissements, un traitement juste et équitable et au moins aussi favorable que celui qu'elle accorde à ses propres investisseurs ou aux investisseurs de tout État tiers.

3. Les dispositions des paragraphes 1 et 2 ne doivent pas être interprétées comme obligeant une Partie contractante à étendre aux investisseurs de l'autre Partie contractante le bénéfice de tout traitement, préférence ou privilège qui peut être accordé par la première Partie contractante en vertu :

a) de toute union douanière ou zone de libre-échange, ou zone de tarif extérieur commun d'une union économique, ou d'un accord monétaire ou autres formes de coopération régionale dont l'une ou l'autre Partie contractante est ou peut devenir partie; ou

b) de tout accord ou arrangement international portant en totalité ou principalement sur la fiscalité.

Article 4. Expropriation

1. Les investissements des investisseurs d'une Partie contractante sur le territoire de l'autre Partie contractante ne peuvent faire l'objet d'expropriation, de nationalisation ou d'autres mesures ayant des effets équivalents à ceux d'une expropriation ou d'une nationalisation (ci-après « expropriation »), sauf pour des raisons d'utilité publique et contre le paiement d'une indemnisation rapide, adéquate et effective. Les mesures d'expropriation sont prises dans des conditions non discriminatoires conformément aux procédures juridiques.

2. Cette indemnisation doit correspondre à la juste valeur marchande qu'avait l'investissement exproprié immédiatement avant que les mesures d'expropriation ne soient prises ou avant qu'elles ne soient rendues publiques, selon la première éventualité. L'indemnisation est assortie d'un intérêt au taux commercial en vigueur de la date d'expropriation jusqu'à la date de son paiement, est versée sans retard indu, et est effectivement réalisable et librement transférable. Tant en cas d'expropriation que d'indemnisation, l'investisseur bénéficie d'un traitement qui n'est pas moins favorable que celui qui aurait été accordé par la Partie contractante à ses propres investisseurs ou aux investisseurs de tout État tiers.

3. Les investisseurs d'une Partie contractante affectés par les mesures d'expropriation ont le droit à un examen rapide de leur affaire par un organe judiciaire ou toute autorité indépendante de l'autre Partie contractante et à l'évaluation de leurs investissements conformément aux principes énoncés dans le présent article.

4. Lorsqu'une Partie contractante prend des mesures d'expropriation à l'encontre des avoirs d'une société établie ou constituée en vertu de ses lois et règlements, dans laquelle les investisseurs de l'autre Partie contractante participent ou possèdent des actions ou des obligations, les dispositions du présent article s'appliquent.

Article 5. Indemnisation des pertes

1. Les investisseurs de l'une des Parties contractantes dont les investissements auraient subi des pertes du fait d'une guerre ou d'un autre conflit armé, d'un état d'urgence national, d'une révolte, d'une insurrection, d'une émeute ou d'une situation analogue sur le territoire de l'autre Partie contractante bénéficient, de la part de cette autre Partie contractante, d'un traitement qui n'est pas moins favorable que celui qu'elle accorde à ses propres investisseurs ou à ceux d'un État tiers en ce qui concerne la restitution, l'indemnisation, la réparation ou toute autre forme de règlement. Les paiements en résultant sont librement transférables, sans retard injustifié.

2. Sans préjudice des dispositions du paragraphe 1, les investisseurs d'une Partie contractante qui, dans l'une des situations visées dans ce paragraphe, subissent des pertes sur le territoire de l'autre Partie contractante résultant :

a) de la réquisition de leurs biens par ses forces ou autorités; ou

b) de la destruction de leurs biens, par ses forces ou autorités, non causée par des combats ou non requise par la situation,

se verront accorder leur restitution ou une indemnité raisonnable qui n'est pas moins favorable que celle qui serait accordée dans les mêmes circonstances à un investisseur de l'autre Partie contractante ou à un investisseur de tout État tiers. Les paiements en résultant sont librement transférables, sans retard injustifié.

Article 6. Transferts

1. Chacune des Parties contractantes garantit aux investisseurs de l'autre Partie contractante le libre transfert de leurs investissements et du revenu de ces investissements. De tels transferts incluent en particulier, mais non exclusivement :

a) le montant net des bénéfices, les plus-values, dividendes, intérêts, redevances, droits, honoraires et commissions et tous autres revenus courants provenant de ces investissements;

b) le produit de la vente ou de la liquidation totale ou partielle des investissements;

c) les fonds destinés au remboursement des prêts relatifs aux investissements;

d) les rémunérations de ressortissants de l’autre Partie contractante qui sont autorisés à travailler sur son territoire en relation avec les investissements;

e) les fonds supplémentaires nécessaires à l'entretien ou à l'extension des investissements existants;

f) les montants consacrés aux frais de gestion des investissements sur le territoire de l'autre Partie contractante; et

g) l’indemnité prévue aux articles 4 et 5.

2. Sans préjudice des dispositions du paragraphe 1, les investisseurs de l'autre Partie contractante s'acquittent de leurs obligations financières, notamment du paiement d'impôts, sur le territoire d'une Partie contractante conformément à ses lois et règlements.

3. Tous les transferts en vertu du présent Accord sont effectués dans une monnaie librement convertible, sans restriction ni retard indu au taux de change du marché en vigueur à la date du transfert.

Article 7. Subrogation

Une Partie contractante, ou son représentant désigné, ayant, en raison d'une garantie donnée pour un investissement fait sur le territoire de l'autre Partie contractante, versé un certain montant à un de ses investisseurs, est, en vertu de la subrogation, fondée à faire valoir les droits et revendications ainsi qu'à assumer les obligations dudit investisseur. La Partie contractante subrogée ou son organisme désigné ne peut obtenir des droits ni assumer des obligations excédant ceux de l'investisseur bénéficiant d'une garantie.

Article 8. Règlement des différends en matière d'investissement entre une Partie contractante et un investisseur de l'autre Partie contractante

1. Tout différend entre une Partie contractante et un investisseur de l'autre Partie contractante résultant d'une violation présumée d'une obligation commise dans le cadre du présent Accord, concernant notamment l'expropriation ou la nationalisation d'investissements est, dans la mesure du possible, réglé à l'amiable entre les parties au différend.

2. À défaut de règlement dans les trois mois à compter de la date à laquelle l'une ou l'autre des parties au différend a sollicité un règlement à l'amiable, l'investisseur est en droit de porter le cas devant le tribunal compétent de la Partie contractante sur le territoire de laquelle les investissements ont été faits, ou devant le Centre international pour le règlement des différends relatifs aux investissements (CIRDI) créé en vertu de la Convention pour le règlement des différends relatifs aux investissements entre États et ressortissants d'autres États, conclue à Washington le 18 mars 1965, ou devant un tribunal ad hoc établi conformément au Règlement d'arbitrage de la Commission des Nations Unies pour le droit commercial international (CNUDCI).

3. La sentence est définitive et a force exécutoire pour les parties au différend. Chaque Partie contractante assure la reconnaissance et l'exécution de la sentence conformément à sa législation et à sa réglementation pertinentes.

Article 9. Règlement des différends entre les Parties contractantes

1. Si possible, les différends entre les Parties contractantes concernant l'interprétation ou l'application du présent Accord sont réglés par la voie de consultations ou négociations.

2. Si le différend ne peut être réglé dans les trois mois, il est soumis, à la demande de l'une ou l'autre Partie contractante, à un tribunal arbitral conformément aux dispositions du présent article.

3. Le tribunal arbitral est constitué au cas par cas comme suit : dans les deux mois suivant la réception de la demande en arbitrage, chaque Partie contractante désigne un membre du tribunal. Ces deux membres choisissent ensuite un ressortissant d'un État tiers qui, avec l'accord des deux Parties contractantes, sera nommé président du tribunal (appelé ci-après le « Président »). Le Président est nommé dans les trois mois suivant la date de désignation des deux autres membres.

4. Si les nominations ne sont pas faites dans les délais prévus au paragraphe 3, il peut être demandé au Président de la Cour internationale de Justice de procéder aux nominations. Si le Président est un ressortissant de l'une ou l'autre Partie contractante ou s'il est empêché, pour toute autre raison, de remplir cette fonction, le Vice-Président est invité à procéder aux nominations requises. Si le Vice-Président est également un ressortissant de l'une des Parties contractantes ou s'il est empêché d'assurer cette fonction, les nominations sont effectuées par le membre de la Cour internationale de Justice le plus ancien qui n'est pas un ressortissant de l'une ou l'autre Partie contractante.

5. Le tribunal arbitral rend sa sentence sur la base des dispositions du présent Accord et d'autres accords similaires conclus entre les Parties contractantes, ainsi que selon les principes généraux du droit international. Il statue à la majorité des voix et sa sentence aura force obligatoire. Chaque Partie contractante prend à sa charge les frais de son arbitre et de sa représentation dans la procédure arbitrale; les frais du Président ainsi que les autres frais sont

assumés à parts égales par les deux Parties contractantes. Le tribunal arbitral pourra toutefois ordonner dans sa sentence qu'une proportion plus importante des frais soit prise en charge par l'une des Parties contractantes. Il déterminera sa propre procédure.

Article 10. Champ d'application de l'Accord

Le présent Accord s'appliqueraient à tous les investissements, qu'ils aient été effectués avant ou après son entrée en vigueur. Il ne s'applique toutefois pas aux différends relatifs à des investissements qui auraient été réglés avant son entrée en vigueur.

Article 11. Application d'autres règles et engagements spéciaux

1. Dans les cas où s'appliquent simultanément les dispositions du présent Accord et celles d'un autre accord international auquel les deux Parties contractantes ont adhéré, aucune disposition du présent Accord n'empêche l'une ou l'autre Partie contractante, ou l'un de ses investisseurs qui possède des investissements sur le territoire de l'autre Partie contractante, de tirer parti des règles les plus favorables à sa situation.

2. Dans le cas où le traitement accordé par l'une des Parties contractantes aux investisseurs de l'autre Partie contractante conformément à sa législation et à sa réglementation ou à d'autres dispositions ou contrats spécifiques est plus favorable que celui accordé par le présent Accord, le traitement le plus favorable s'applique.

Article 12. Consultations

L'une des Parties contractantes peut proposer à l'autre Partie contractante la tenue de consultations sur toute question concernant l'interprétation ou l'application du présent Accord. L'autre Partie contractante examine la demande avec bienveillance et prend des mesures adéquates pour permettre de telles consultations.

Article 13. Entrée en vigueur, durée et dénonciation

1. Chacune des Parties contractantes notifie à l'autre l'accomplissement des procédures requises par sa législation pour l'entrée en vigueur du présent Accord. Ce dernier entre en vigueur trente jours après la date de la deuxième notification.

2. Le présent Accord est conclu pour une période de dix ans et demeurera en vigueur par la suite, à moins que, un an avant l'expiration de la période initiale ou de toute période ultérieure, l'une ou l'autre Partie contractante notifie à l'autre par écrit son intention de le dénoncer.

3. En ce qui concerne les investissements effectués avant la dénonciation, les dispositions du présent Accord continuent de produire leurs effets pour une période de quinze ans à compter de la date de dénonciation.

EN FOI DE QUOI, les soussignés, à ce dûment autorisés par leurs Gouvernements respectifs, ont signé le présent Accord.

FAIT à Sofia, le 12 juin 2006, en double exemplaire, en langues coréenne, bulgare et anglaise, tous les textes faisant également foi. En cas de divergence d'interprétation, le texte anglais prévaut.

Pour le Gouvernement de la République de Corée :

YU MYUNG-HWAN

Pour le Gouvernement de la République de Bulgarie :

NAHIT ZIYA

PROTOCOLE

Lors de la signature de l'Accord entre le Gouvernement de la République de Corée et le Gouvernement de la République de Bulgarie pour la promotion et à la protection réciproques des investissements, les soussignés sont convenus des dispositions suivantes, lesquelles font partie intégrante de l'Accord :

En ce qui concerne l'article 3 :

a) Le Gouvernement de la République de Corée note que l'obtention de propriété de terres sur le territoire de la République de Bulgarie par des personnes physiques ou morales étrangères est soumise à la Constitution de la République de Bulgarie.

b) Le Gouvernement de la République de Bulgarie note que, conformément à la Loi de la République de Corée relative à l'acquisition de terres par des étrangers, selon laquelle il est interdit à une personne physique ou morale établie en vertu des lois de la République de Corée ou au Gouvernement de la République de Corée d'acquérir ou de céder des terres sur le territoire d'un pays étranger, il peut être interdit à des personnes physiques ou morales ou au gouvernement de ce pays d'acquérir ou de céder des terres sur le territoire de la République de Corée.

c) Pour plus de clarté, il est entendu que, après l'adhésion de la République de Bulgarie à l'Union européenne, le traitement accordé en vertu du présent Accord ne s'applique pas à tous les avantages qui sont ou seront accordés par la République de Bulgarie à ses propres investisseurs ou aux investisseurs des États membres en vertu de cette adhésion.

EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet par leur Gouvernement, ont signé le présent Protocole.

FAIT à Sofia, le 12 juin 2006, en double exemplaire, en langues coréenne, bulgare et anglaise, tous les textes faisant également foi. En cas de divergence d'interprétation, le texte anglais prévaut.

Pour le Gouvernement de la République de Corée :

YU MYUNG-HWAN

Pour le Gouvernement de la République de Bulgarie :

NAHIT ZIYA

No. 49669

Republic of Korea
and
Brunei Darussalam

Agreement between the Government of the Republic of Korea and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam concerning the encouragement and reciprocal protection of investments. Bandar Seri Begawan, 14 November 2000

Entry into force: *30 October 2003, in accordance with article 12*

Authentic texts: *English, Korean and Malay*

Registration with the Secretariat of the United Nations: *Republic of Korea, 6 July 2012*

République de Corée
et
Brunéi Darussalam

Accord entre le Gouvernement de la République de Corée et le Gouvernement de Sa Majesté le Sultan et Yang Di-Pertuan du Brunéi Darussalam relatif à l'encouragement et à la protection réciproque des investissements. Bandar Seri Begawan, 14 novembre 2000

Entrée en vigueur : *30 octobre 2003, conformément à l'article 12*

Textes authentiques : *anglais, coréen et malais*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 6 juillet 2012*

[ENGLISH TEXT – TEXTE ANGLAIS]

AGREEMENT
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF KOREA
AND
THE GOVERNMENT OF HIS MAJESTY THE SULTAN AND YANG DI-PERTUAN OF BRUNEI DARUSSALAM
CONCERNING
THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Korea and the Government of His Majesty The Sultan and Yang Di-Pertuan of Brunei Darussalam (hereinafter referred to as "the Contracting Parties"),

Desiring to create favourable conditions for greater economic co-operation between the two countries and, in particular for investments by investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit,

Recognising that the encouragement and reciprocal protection under international agreements of such investments will be conducive to the stimulation of business initiatives and will increase prosperity in both countries,

Recognising the importance of the transfer of technology and human resources development arising from such investments,

Have agreed as follows:

ARTICLE 1
Definitions

For the purposes of this Agreement:

1. "Investments" means every kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation 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 and rights or interest derived therefrom as well as securities or bonds issued by a Contracting Party;

(c) claims to money or to any performance under contract associated with any investment having an economic value;

(d) intellectual property rights including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, technical processes, trade secrets and know-how, and goodwill; and

(e) business concessions having an economic 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 or rights 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 any nationals or juridical persons of one Contracting Party who invest in the territory of the other Contracting Party:

(a) the term "nationals" means natural persons who are accorded the status of a national of a Contracting Party in accordance with its laws; and

(b) the term "juridical persons" means any entity such as companies, public institutions, authorities, foundations, partnerships, firms, establishments, organisations, corporations or associations, incorporated or constituted in accordance with the laws and regulations of that Contracting Party, irrespective of whether or not their activities are directed to profit, organised with limited or unlimited liability.

4. "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 and with its legislation, sovereign rights or jurisdiction for the purpose of exploration and exploitation of the natural resources of such areas.

(b) in respect of Brunei Darussalam, the territory of Brunei Darussalam and the maritime areas adjacent to the coast of Brunei Darussalam to the extent to which Brunei Darussalam may exercise sovereign rights or jurisdiction in accordance with international law and its legislation.

ARTICLE 2
Promotion and Protection of the Investments

1. Each Contracting Party shall encourage and promote favourable 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 and security in the territory of the other Contracting Party. 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 by investors of the other Contracting Party.

ARTICLE 3
Treatment of Investments

1. Each Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting Party, treatment no less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State, whichever is more favourable to investors of the other Contracting Party.

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party as regards operation, management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to 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 the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation.

4. Such treatment shall not relate to privileges which either Contracting Party accords to investors of third States on account of its present or future membership of, or association with a customs or economic union, a common market or a free trade area or similar international agreements.

ARTICLE 4
Compensation for Losses

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 damage or 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 which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded restitution or adequate compensation no less favourable than that which would be accorded under the same circumstances to an investor of the other Contracting Party or to an investor of any other State.

ARTICLE 5
Expropriation

1. Investments of investors of one Contracting Party shall not be nationalised, expropriated or otherwise subjected to any other measures having an effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for public purpose and against prompt, adequate and effective compensation. The expropriation shall be carried out on a non-discriminatory basis in accordance with legal procedures.

2. Such compensation shall amount to the fair market value of the expropriated investments immediately before expropriation was taken or before impending expropriation became public knowledge, whichever is the earlier, shall include interest at the applicable commercial rate or LIBOR rate, whichever is higher, from the date of expropriation until the date of payment and shall be made without undue delay, be effectively realisable and be freely convertible and transferable.

3. 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.

4. Where a 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, debentures or other forms of participation, the provisions of this Article shall be applied.

ARTICLE 6
Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of their investments and returns. Such transfers shall include, in particular, though not exclusively:

(a) net profit, capital gains, dividends, interest, royalties, fees and any other current income accruing from investments;

(b) proceeds accruing from the sale or the total or partial liquidation of investments;

(c) funds in repayment of loans related to investments;

(d) earnings of nationals of the other Contracting Party who are allowed to work in connection with investments in its territory;

(e) additional funds necessary for the maintenance or development of the existing investments;

(f) compensation pursuant to Articles 4 and 5; and

(g) payments pursuant to Article 7.

2. All transfers under this Agreement shall be made in a freely convertible currency, without undue restriction and delay, at the market exchange rate, prevailing at the date of the transfer.

3. In the event a market exchange rate does not exist, the rate of exchange shall correspond to the cross rate obtained from those rates which would be applied by the International Monetary Fund, on the date of payment, for conversions of the currencies concerned into Special Drawing Rights.

ARTICLE 7
Subrogation

1. If one Contracting Party or its designated agency ("the first Contracting Party "), makes a payment to any of its investors under an indemnity given in respect of an

investment in the territory of the other Contracting Party ("the second Contracting Party"), the second Contracting Party shall recognise:

(a) the assignment to the first Contracting Party by law or by legal transaction of all the rights or claims of the investor indemnified; and

(b) that the first Contracting Party is entitled to exercise such rights and to enforce such claims by virtue of subrogation, to the same extent as the investor indemnified.

2. The first Contracting Party shall be entitled in all circumstances to the same treatment with regard to:

(a) the rights and claims acquired by virtue of the assignment; and

(b) any payments received in pursuance of those rights and claims, as the investor indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

ARTICLE 8

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

1. Investment disputes between one Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled amicably between the parties in dispute.

2. The local remedies under the laws and regulations of one Contracting Party in the territory of which the investment has been made shall be available for investors of the other Contracting Party on the basis of treatment no less favourable than that accorded to investments of its own investors or investors of any third State, whichever is more favourable to investors.

3. If a dispute cannot be settled within six (6) months of the date when it was raised, it shall, upon the request of the investor of the other Contracting Party, be submitted to arbitration. The arbitration shall be conducted in accordance with the Arbitration Rule of the United Nations Commission for International Trade Law unless the parties to the dispute agree otherwise.

4. In the event of both Contracting Parties having become Contracting States of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March, 1965 (the ICSID Convention), disputes under this Article shall be submitted for arbitration under the ICSID Convention unless the parties to the dispute agree otherwise.

5. Each Contracting Party hereby consents to the submission of a dispute to arbitration in accordance with the procedures set out in this Agreement.

6. The award made as a result of paragraph (3) or (4) of this Article shall be final and binding on the parties to the dispute. An investor may seek enforcement of an arbitration award in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 or the ICSID Convention, if both Contracting Parties are parties to such instruments.

7. During arbitration proceedings or the enforcement of an award, the Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of its loss.

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 by consultation through diplomatic channels.

2. If any dispute cannot be settled within six(6) months, it shall, upon the request of either Contracting Party, be submitted to an ad hoc Arbitral Tribunal in accordance with the provisions of this Article.

3. Such an 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, which enjoys diplomatic relations with both Contracting Parties, 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 is also 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 reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties.

6. Each Contracting Party shall bear the costs of its own arbitrator and its representation in the arbitral proceedings. The costs of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The Tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties.

7. The Arbitral Tribunal shall determine its own procedure.

ARTICLE 10
Application of Other Rules

1. Where bilateral or multilateral agreements to which both Contracting Parties are parties, provide more favourable treatment in respect of investments of either Contracting Party or its investors than this Agreement, such agreements shall apply to the extent that they are more favourable than this Agreement.

2. Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

3. 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

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 which was settled before its entry into force.

ARTICLE 12
Entry into Force, Duration and Termination

1. This Agreement shall enter into force thirty(30) days after the last notification in writing that the Contracting Parties have fulfilled all the legal requirements for the entry into force of this Agreement.

2. This Agreement shall remain in force for a period of ten(10) 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 date of termination of this Agreement, the provisions of Article 1 to 11 of this Agreement shall remain in force for a further period of fifteen(15) years from the date of termination of this Agreement.

4. This Agreement may be revised by mutual consent. Any revision or termination of this Agreement shall be effected without prejudice to any rights or obligations accruing or incurred under this Agreement prior to the effective date of such revision or termination.

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

DONE in duplicate at Bandar Seri Begawan on the 14th day of November 2000 in the Korean, Malay, 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 HIS MAJESTY THE SULTAN AND YANG DI-PERTUAN OF BRUNEI DARUSSALAM

[KOREAN TEXT – TEXTE CORÉEN]

대한민국 정부와 브루나이다루살람 정부간의 투자의 장려 및 상호보호에 관한 협정

대한민국 정부와 브루나이다루살람 정부(이하 "체약당사자"라 한다)는,

평등과 호혜의 기초위에서 양국간의 경제적 협력, 특히 일방체약당사자의 투자자가 타방체약당사자의 영역안에서 행한 투자에 유리한 조건을 조성하기를 희망하고,

국제협정에 의한 투자의 장려 및 상호보호가 사업상 창의촉진을 유도하며 양국의 번영을 증진시킨다는 것을 인식하고,

투자로부터 발생하는 기술이전 및 인적자원개발의 중요성을 인식하여,

다음과 같이 합의하였다.

제 1 조
정 의

이 협정의 목적상,

1. "투자"라 함은 일방체약당사자의 투자자가 타방체약당사자의 영역안에서 타방체약당사자의 법률에 따라 투자한 모든 종류의 자산을 의미하며, 특히 다음 각목의 사항을 포함하나 이에 한정되지 아니한다.
   가. 동산·부동산과 저당권·유치권·리스 또는 질권 등 기타 모든 재산권
   나. 회사 또는 기업의 지분·주식·회사채, 기타 모든 형태의 참여와 이에 따르는 권리나 이익과 일방체약당사자에 의하여 발행되는 유가증권 또는 공채
   다. 경제적 가치를 가진 투자와 연관된 계약상의 금전청구권이나 이행청구권
   라. 저작권·특허권·상표권·상호권·의장권·기술공정·영업비밀·노하우 및 영업권에 관한 권리를 포함하는 지적재산권
   마. 천연자원의 탐사·개간·추출 또는 개발을 위한 양허권을 포함하여 법률이나 계약에 의하여 부여되는 경제적 가치 있는 사업양허권

자산이나 권리가 투자되거나 재투자되어 그 형태에 어떠한 변경이 있더라도 이는 투자로서의 성격에 영향을 미치지 아니한다.

2. "수익"이라 함은 투자에 의하여 발생한 금액을 말하며, 특히 이윤·이자·자본이득·배당·사용료 및 모든 종류의 수수료를 포함하나 이에 한정되지 아니한다.

3. "투자자"라 함은 타방체약당사자의 영역에서 투자하는 일방체약당사자의 국민 또는 법인을 말한다.

가. "국민"이라 함은 일방체약당사자의 법률에 따라 그 나라 국민의 지위가 부여된 자연인을 말한다.

나. "법인"이라 함은 그 활동이 이윤을 지향하는 지의 여부나 유한 또는 무한의 책임하에 설립되었는지의 여부에 관계없이, 일방체약당사자의 법령에 따라 설립되거나 조직된 회사·공공조직·공공사업기관·재단·조합·상사·기구·조직·주식회사 또는 협회 등의 모든 실체를 말한다.

4. "영역"이라 함은

가. 대한민국에 대하여는 대한민국의 영역과 대한민국이 국제법과 자국 법률에 따라 그 수역에서의 천연자원을 탐사·개발할 목적으로 주권적 권리 또는 관할권을 행사하는 영해의 외측한계선에 인접한 해상 및 하층토를 포함하는 수역을 말한다.

나. 브루나이다루살람에 대하여는 브루나이다루살람의 영역과 브루나이다루살람이 국제법 및 자국 법률에 따라 주권적 권리 또는 관할권을 행사하는 범위까지의 브루나이다루살람의 해안선에 인접한 수역을 말한다.

제 2 조
투자의 증진과 보호

1. 각 체약당사자는 타방체약당사자의 투자자가 자국의 영역안에서 투자를 행하는데 있어서 유리한 조건을 장려·조성하며, 자국의 법령에 따라 그러한 투자를 허용한다.

2. 각 체약당사자의 투자자가 행한 투자는 타방체약당사자의 영역안에서 언제나 공정하고 평등한 대우를 부여받으며, 충분한 보호와 안전을 향유한다. 어느 체약당사자도 타방체약당사자의 투자자가 자국의 영역안에서 행한 투자의 운용·관리·유지·사용·향유 또는 처분과 관련하여 부당한 또는 차별적 조치에 의한 어떠한 방식으로도 이를 저해하여서는 아니된다.

제 3 조
투자의 대우

1. 각 체약당사자는 자국의 영역안에서 타방체약당사자의 투자자가 행한 투자 및 수익에 대하여 자국 또는 제3국의 투자자의 투자 및 수익에 대하여 부여하는 대우중 보다 유리한 것보다 불리하지 아니한 대우를 부여한다.

2. 각 체약당사자는 자국의 영역안에서 타방체약당사자의 투자자에게 그들 투자의 운영·관리·유지·사용·향유 또는 처분과 관련하여 자국 또는 제3국의 투자자에게 부여하는 대우중 보다 유리한 것보다 불리하지 아니한 대우를 부여한다.

3. 이 조 제1항 및 제2항의 규정은 일방체약당사자가 전적으로 또는 주로 조세와 관련된 국제협정이나 약정으로부터 발생하는 대우·특례 또는 특권의 이익을 타방체약당사자의 투자자에게 부여하여야 하는 것으로 해석되지 아니한다.

4. 그러한 대우는 어느 일방체약당사자가 현재 또는 미래에 관세 또는 경제동맹, 공동시장, 자유무역지대나 이들과 유사한 국제협정에 가입 또는 참여하여 제3국의 투자자에게 부여하는 특권과는 관계가 없다.

제 4 조
손 실 보 상

1. 일방체약당사자의 투자자는 자신의 투자가 타방체약당사자의 영역안에서 전쟁이나 기타 무력충돌·국가비상사태·항거·반란·폭동 또는 기타 유사한 사태로 인하여 손실을 입은 경우에는 그 손실에 대한 원상회복·배상·보상 또는 기타형태의 해결에 관하여 그 타방체약당사자가 자국 또는 제3국의 투자자에 대하여 부여하는 것보다 불리하지 아니한 대우를 부여받는다.

2. 이 조 제1항을 저해함이 없이, 동항에 규정된 어떠한 사태하에서 타방체약당사자의 영역안에서 다음 각목의 사항으로부터 발생하는 손해나 손실을 입은 일방체약당사자의 투자자는 동일한 상황하에서 타방체약당사자의 투자자나 제3국의 투자자에게 부여되는 것보다 불리하지 아니한 원상회복 또는 충분한 보상을 부여받는다.

가. 타방체약당사자의 군대 또는 당국에 의한 투자자의 재산의 징발, 또는

나. 전투행위중에 기인되지 아니하였거나 그 사태의 필요성에 의하여 요구되지 아니하였던 것으로서 타방체약당사자의 군대 또는 당국에 의한 투자자 재산의 파괴

제 5 조
수 용

1. 일방체약당사자의 투자자의 투자는 공공의 목적을 위하고, 신속·충분·유효한 보상을 하는 경우를 제외하고는 타방체약당사자의 영역안에서 국유화 또는 수용되거나 국유화 및 수용에 상응하는 효과를 가진 기타 다른 조치(이하 "수용" 이라 한다)를 당하지 아니한다. 수용은 적법한 절차에 따라 비차별적인 기초위에서 이루어진다.

2. 그러한 보상은 수용직전 또는 수용이 임박하였음이 공공연히 알려지기 직전중 보다 이른 시기에 수용된 투자의 공정한 시장가치에 상당하여야 하고, 수용일부터 지급일까지의 적용가능한 시장이자율 또는 리보금리중 보다 높은 이자를 포함하여야 하며, 부당한 지체없이 지급되고 유효하게 이루어지며 자유롭게 태환되고 송금될 수 있어야 한다.

3. 수용에 의하여 영향을 받은 일방체약당사자의 투자자는 이 조에서 설정된 원칙에 따라 자신의 사안과 투자의 가치산정에 대하여 타방체약당사자의 사법당국 또는 기타의 독립된 당국에 신속한 심사를 청구할 수 있는 권리를 가진다.

4. 일방체약당사자가 자국의 법령에 의하여 조직되거나 설립되고, 타방체약당사자의 투자자가 지분·회사채를 소유하거나 기타의 형태로 참여한 회사의 자산을 수용하는 경우에도 이 조의 규정이 적용된다.

제 6 조
송 금

1. 각 체약당사자는 타방체약당사자의 투자자에게 투자 및 수익의 자유로운 송금을 보장한다. 그러한 송금은 특히 다음 각목의 사항을 포함하나 이에 한정되지 아니한다.

가. 투자로부터 발생하는 순수익·자본이득·배당금·이자·사용료·수수료 및 기타 경상소득

나. 투자의 매각 또는 전면적·부분적 청산으로 발생하는 수익금

다. 투자와 관련된 차용금의 상환자금

라. 투자와 관련하여 자국의 영역안에서 근로가 허용된 타방체약당사자의 국민의 소득

마. 기존 투자의 유지 또는 확대를 위하여 필요한 추가자금

바. 제4조 및 제5조의 규정에 의한 보상금

사. 제7조의 규정에 의한 지불

2. 이 협정에 따른 모든 송금은 자유태환성통화로 부당한 제한이나 지체없이, 송금 당일에 유효한 시장환율에 따라 이루어진다.

3. 시장환율이 존재하지 아니하는 경우에는 환율은 지불일자에 당해 통화를 특별인출권으로 이체하기 위하여 국제통화기금에 의하여 적용되는 이자율로부터 얻어지는 환시세에 상응하여야 한다.

제 7 조
변제자 대위

1. 일방체약당사자 또는 그 지정기관(전기 체약당사자)이 타방체약당사자(후기 체약당사자)의 영역안에서의 투자에 대하여 부여한 손실보상약정에 따라 자국의 투자자에게 변제한 경우, 후기 체약당사자는 다음 각목의 사항을 인정한다.

가. 손실보상된 투자자의 권리 또는 청구권을 법이나 합법적 거래에 따라 전기 체약당사자에게 양도하는 것

나. 전기 체약당사자가 변제자 대위에 의하여 손실보상받은 투자자와 동일한 수준에서 그러한 권리를 행사하고 그 청구권을 주장할 자격을 부여받을 것.

2. 전기 체약당사자는 다음 각목의 사항에 관하여는 어떠한 상황에서도 동일한 대우를 부여받는다.

가. 양도에 의하여 취득한 권리 및 청구권

나. 손실보상된 투자자가 당해 투자 및 이와 관련한 수익에 대하여 이 협정에 의하여 수령할 자격이 있는 권리나 청구권에 의하여 수령한 모든 지급금

제 8 조
일방체약당사자와 타방체약당사자의 투자자간의 투자분쟁해결

1. 일방체약당사자와 타방체약당사자의 투자자간의 투자분쟁은 가능한 분쟁당사자간에 우호적인 방법으로 해결된다.

2. 투자가 행하여진 영역안에서 일방체약당사자의 법령에 따른 국내 구제는 자국 또는 제3국의 투자자의 투자에 대하여 부여되는 대우중 투자자에게 보다 유리한 것보다 불리하지 아니한 대우의 기초위에서 타방체약당사자의 투자자에게 이용 가능하여야 한다.

3. 분쟁이 제기된 날부터 6월 이내에 분쟁이 해결되지 아니하는 경우, 동 분쟁은 타방 체약당사자의 투자자의 요청에 의하여 중재에 회부된다. 중재는 분쟁당사자가 달리 합의하지 아니하는 한 국제연합무역법위원회의 중재규칙에 따라 수행된다.

4. 양 체약당사자가 국가와타방국가국민간의투자분쟁의해결에관한1965년3월 18일의워싱턴협약(ICSID 협약)의 체약당사국이 된 경우, 이 조에 의한 분쟁은 분쟁당사자가 달리 합의하지 않는 한 ICSID 협약에 의한 중재에 회부된다.

5. 각 체약당사자는 분쟁이 이 협정에 마련된 절차에 따른 중재에 회부되는 것에 동의한다.

6. 이 조 제3항 및 제4항의 결과로서 내려진 판정은 분쟁당사자에 대하여 최종적이며 구속력을 갖는다. 투자자는 양 체약당사자가 1958년6월10일의외국중재판정의승인과집행에 관한협약이나 ICSID 협약의 당사자일 경우에는 이에 따라 중재판정의 집행을 요구할 수 있다.

7. 중재절차나 판정을 집행하는 동안 분쟁에 관련된 일방체약당사자는 타방체약당사자가 손해의 전부 또는 일부에 대하여 보험계약에 따라 보상을 받는 것에 반대하지 아니한다.

제 9 조
체약당사자간 분쟁의 해결

1. 이 협정의 해석 또는 적용에 관한 체약당사자간의 분쟁은 가능한 외교적 경로를 통한 협의에 의하여 해결된다.

2. 어떠한 분쟁이 6월 이내에 해결되지 아니할 경우, 그 분쟁은 어느 일방체약당사자의 요청에 의하여 이 조의 규정에 의하여 임시 중재재판소에 회부된다.

3. 이러한 중재재판소는 개개의 사안별로 다음과 같은 방법으로 구성된다. 각 체약당사자는 중재재판요청의 접수일부터 2월 이내에 1인의 재판관을 임명한다. 그 2인의 재판관은 양 체약당사자의 동의를 얻어 양 체약당사자가 외교관계를 가지는 제3국의 국민을 중재재판소의 재판장으로 선출한다. 재판장은 다른 2인의 재판관의 임명일부터 2월 이내에 임명된다.

4. 이 조 제3항의 규정에 의한 기간내에 필요한 임명이 이루어지지 아니한 경우, 어느 일방체약당사자는 국제사법재판소 소장에게 이러한 임명을 요청할 수 있다. 만약, 국제사법재판소 소장이 어느 일방체약당사자의 국민이거나 위의 임무를 수행할 수 없을 경우에는 그 부소장에게 임명을 하도록 요청한다. 그 부소장도 어느 일방체약당사자의 국민이거나 위의 임무를 수행할 수 없는 경우에는 어느 일방체약당사자의 국민이 아닌 자로서 국제사법재판소의 그 다음 서열의 재판관에게 임명을 하도록 요청한다.

5. 중재재판소는 다수결에 의하여 결정을 내린다. 그러한 결정은 양 체약당사자에 대하여 구속력을 갖는다.

6. 각 체약당사자는 자국의 재판관과 중재절차에서의 자국대리인의 비용을 부담한다. 재판장의 비용과 기타 비용은 양 체약당사자가 균등하게 부담한다. 그러나, 동 재판소는 그 결정으로 양 체약당사자중 일방이 보다 많은 비용을 부담하도록 명할 수 있다.

7. 중재재판소는 그 자체의 절차를 결정한다.

제 10 조
다른 규칙의 적용

1. 양 체약당사자가 당사자인 양자 또는 다자협정이 어느 일방체약당사자의 투자 또는 그 투자자에 대하여 이 협정보다 유리한 대우를 규정하는 경우, 이 협정보다 유리한 범위까지는 그 협정이 적용된다.

2. 각 체약당사자는 자국의 영역안에서 타방체약당사자의 투자자의 투자와 관련하여 부담하는 다른 모든 의무를 준수한다.

3. 일방체약당사자가 타방체약당사자의 투자자에게 자국의 법령이나 다른 특례규정 또는 계약에 의하여 부여하는 대우가 이 협정에 의하여 부여하는 것보다 유리할 경우에는 그 유리한 대우가 부여된다.

제 11 조
협정의 적용

이 협정은 협정의 발효 이전 및 이후에 이루어진 모든 투자에 적용된다. 그러나, 협정의 발효 이전에 해결된 투자에 관한 분쟁에 대하여는 적용되지 아니한다.

제 12 조
발효·존속 및 종료

1. 이 협정은 체약당사자가 서면으로 협정의 발효를 위한 법적 요건을 완료하였음을 통고한 나중의 날부터 30일 후에 발효한다.

2. 이 협정은 10년간 유효하며, 그 이후에도 어느 일방체약당사자가 타방체약당사자에게 이 협정의 종료의사를 1년전에 서면으로 통지하지 아니하는 한 계속 유효하다.

3. 이 협정의 종료 이전에 행하여진 투자에 관하여는 이 협정의 제1조 내지 제11조의 규정이 이 협정의 종료일부터 15년간 더 유효하다.

4. 이 협정은 상호합의에 의하여 개정될 수 있다. 이 협정의 어떠한 개정이나 종료도 그러한 개정이나 종료의 발효일 이전에 이 협정에 의하여 발생한 권리 또는 부담한 의무를 저해함이 없이 유효하다.

이상의 증거로, 아래 서명자는 그들 각자의 정부로부터 정당하게 권한을 위임받아 이 협정에 서명하였다.

2000년 11월 14일 반다르 세리베가완에서 동등하게 정본인 한국어 · 말레이어 및 영어로 각 2부씩 작성하였다. 해석상의 상위가 있을 경우에는 영어본이 우선한다.

대한민국 정부를 대표하여

이정빈

브루나이다루살람 정부를 대표하여

[MALAY TEXT – TEXTE MALAIS]

PERJANJIAN

DI ANTARA

KERAJAAN REPUBLIK KOREA

DAN

KERAJAAN KEBAWAH DULI YANG MAHA MULIA PADUKA SERI BAGINDA SULTAN DAN YANG DI-PERTUAN NEGARA BRUNEI DARUSSALAM

MENGENAI PENGGALAKAN DAN PERLINDUNGAN TIMBAL BALIK PELABURAN

Kerajaan Republik Korea dan Kerajaan Kebawah Duli Yang Maha Mulia Paduka Seri Baginda Sultan dan Yang Di-Pertuan Negara Brunei Darussalam (selepas ini disebut sebagai Pihak-Pihak Pejanji),

Dengan maksud untuk mewujudkan keadaan yang menggalakkan bagi kerjasama ekonomi yang lebih luas di antara dua buah negara dan, khususnya pelaburan yang dibuat oleh pelabur-pelabur salah satu Pihak Pejanji di dalam wilayah Pihak Pejanji yang satu lagi atas dasar persamaan dan manfaat bersama,

Dengan menyedari bahawa dorongan dan perlindungan timbal balik di bawah perjanjian-perjanjian antarabangsa bagi pelaburan tersebut akan mendatangkan faedah pada merangsang daya usaha perniagaan dan akan meningkatkan kemakmuran di kedua buah negara,

Demi menyedari peri pentingnya pemindahan teknologi dan perkembangan sumber tenaga manusia yang timbul daripada pelaburan tersebut,

Telah bersetuju seperti berikut:

PERKARA 1

Takrifan

Bagi maksud-maksud Perjanjian ini:

(1) Pelaburan bermakna setiap jenis aset yang dilaburkan oleh pelabur-pelabur dari salah satu Pihak Pejanji di dalam wilayah Pihak Pejanji yang satu lagi menurut undang-undang Pihak Pejanji yang satu lagi itu dan terutama sekali, tetapi bukanlah khasnya, termasuk:

(a) harta alih dan harta tak alih dan sebarang hak lain ke atas harta seperti gadai-janji, lien, sewa atau cagaran;

(b) syer dalam, saham dan debentur, dan sebarang bentuk penyertaan yang lain dalam sesebuah syarikat atau sebarang usaha perniagaan dan hak-hak atau kepentingan yang terbit daripadanya dan juga jaminan atau bon yang dikeluarkan oleh suatu Pihak Pejanji;

(c) tuntutan terhadap wang atau kepada sebarang pelaksanaan di bawah kontrak yang berkaitan dengan sebarang pelaburan yang mempunyai nilai ekonomi;

(d) hak ke atas harta intelektual termasuk hak-hak berkaitan dengan hakcipta, paten, tanda perniagaan, nama perniagaan, rekabentuk perindustrian, proses teknikal, rahsia dan kepandaian perniagaan, dan nama baik; dan

(e) konsesi perniagaan yang mempunyai nilai ekonomi yang diberikan oleh undang-undang atau di bawah kontrak, termasuk konsesi untuk mencari, mengusahakan, mengekstrak atau mengeksploit sumber asli.

Sebarang perubahan bentuk dimana aset atau hak itu dilaburkan atau dilabur semula hendaklah tidak menjejaskan cirinya sebagai pelaburan.

(2) pulangan bermakna jumlah wang yang didapat daripada suatu pelaburan dan, terutama sekali, tetapi bukanlah khasnya, termasuk keuntungan, faedah, keuntungan modal, dividen, royalti dan semua jenis bayaran.

(3) pelabur bermakna mana-mana rakyat atau orang-orang juridikal satu Pihak Pejanji yang melabur di dalam wilayah Pihak Pejanji yang satu lagi:

(a) perkataan rakyat bermakna orang sebenar yang diberikan status kerakyatan sebelah Pihak Pejanji menurut undang-undangnya; dan

(b) perkataan orang-orang juridikal bermakna sebarang entiti seperti syarikat, institusi awam, pihak-pihak berkuasa, yayasan, perkongsian, firma, pertubuhan, korporasi, perbadanan atau persatuan, yang diperbadankan atau ditubuhkan menurut undang-undang dan peraturan-peraturan Pihak Pejanji itu, tidak kira sama ada atau tidak aktibiti-aktibiti mereka diarahkan untuk keuntungan, ditubuhkan dengan liabiliti terhad atau tidak terhad.

(4) wilayah bermakna:

(a) berkaitan dengan Negara Brunei Darussalam, wilayah Negara Brunei Darussalam dan kawasan maritim bersempadanan dengan pantai Negara Brunei Darussalam setakat hingga Negara Brunei Darussalam boleh menjalankan hak kedaulatan atau bidang kuasa menurut undang-undang antarabangsa dan undang-undangnya.

(b) berkaitan dengan Republik Korea, sempadan Republik Korea dan juga kawasan maritim, termasuk dasar laut dan tanah yang bersempadanan dengan had luar lautan wilayah yang diatasnya Republik Korea menjalankan, menurut undang-undang antarabangsa dan undang-undangnya, hak kedaulatan atau bidangkuasa bagi maksud menerokai dan mengeksploitasi sumber asli di kawasan-kawasan tersebut.

PERKARA 2

Penggalakan dan Perlindungan Pelaburan

(1) Tiap-tiap Pihak Pejanji hendaklah menggalakkan dan mendorong keadaan yang lebih baik bagi pelabur-pelabur Pihak Pejanji yang satu lagi untuk membuat pelaburan di dalam wilayahnya dan hendaklah menerima pelaburan tersebut menurut undang-undang dan peraturan-peraturannya.

(2) Pelaburan-pelaburan yang dibuat oleh pelabur-pelabur dari tiap-tiap Pihak Pejanji hendaklah pada bila-bila masa diberikan layanan yang adil dan saksama dan hendaklah menikmati perlindungan sepenuhnya dan jaminan di dalam wilayah Pihak Pejanji yang satu lagi. Salah satu Pihak Pejanji tidak boleh dalam apa jua cara pun dengan langkah sewenang-wenangnya atau berat sebelah menjejaskan penyelenggaraan, pengurusan, pemeliharaan, penggunaan, penikmatan atau pelupusan pelaburan yang dibuat di dalam wilayahnya oleh pelabur-pelabur Pihak Pejanji yang satu lagi.

PERKARA 3

Layanan Pelaburan

(1) Tiap-tiap Pihak Pejanji hendaklah di dalam wilayahnya memberikan pelaburan dan pulangan yang dibuat oleh pelabur-pelabur dari Pihak Pejanji yang satu lagi, layanan yang tidak kurang baiknya dari yang diberikannya kepada pelaburan dan pulangan yang dibuat oleh pelabur-pelaburnya sendiri atau pelaburan dan pulangan yang dibuat oleh pelabur dari mana-mana Negara ketiga, yang mana lebih baik kepada pelabur-pelabur Pihak Pejanji yang satu lagi itu.

(2) Tiap-tiap Pihak Pejanji hendaklah di dalam wilayahnya memberikan pelabur-pelabur dari Pihak Pejanji yang satu lagi berkenaan dengan penyelenggaraan, pengurusan, pemeliharaan, penggunaan, penikmatan atau pelupusan pelaburan mereka, layanan yang tidak kurang baiknya dengan yang diberikannya kepada pelabur-pelaburnya sendiri atau kepada pelabur-pelabur mana-mana Negara ketiga, yang mana lebih baik kepada pelabur-pelabur Pihak Pejanji yang satu lagi.

(3) Peruntukan perenggan-perenggan (1) dan (2) Perkara ini hendaklah tidak ditafsirkan sebagai mewajibkan satu Pihak Pejanji untuk memperluaskan kepada pelabur-pelabur Pihak Pejanji yang satu lagi, faedah sebarang layanan, keutamaan atau kemudahan kesan dari sebarang perjanjian antarabangsa atau penyusunan secara keseluruhan atau terutamanya mengenai pencukaian.

(4) Layanan tersebut tidaklah berkaitan dengan keistimewaan yang diberikan oleh salah satu Pihak Pejanji kepada pelabur Negara ketiga disebabkan keanggotaannya sekarang atau akan datang, atau hubungannya dengan kesatuan kastam atau ekonomi, pasaran bersama atau kawasan perdagangan bebas atau perjanjian antarabangsa yang serupa.

PERKARA 4

Pampasan kerana Kerugian

(1) Pelabur-pelabur satu Pihak Pejanji yang pelaburannya mengalami kerugian disebabkan perang atau bertempuran senjata yang lain, suatu keadaan darurat negara, pendurhakaan, pemberontakan, rusuhan atau keadaan serupa yang lain di dalam wilayah Pihak Pejanji yang satu lagi, hendaklah diberi oleh Pihak Pejanji yang satu lagi itu, layanan, berhubung dengan restitusi, pembayaran gantirugi, pemberian pampasan atau bentuk penyelesaian lain, yang tidak kurang baiknya dengan yang diberikan oleh Pihak Pejanji yang satu lagi itu kepada pelabur-pelaburnya sendiri atau kepada pelabur-pelabur dari mana-mana Negara ketiga.

(2) Tanpa menjejaskan perenggan (1) Perkara ini, pelabur-pelabur dari satu Pihak Pejanji yang, dalam sebarang keadaan yang disebutkan dalam perenggan itu, mengalami kerosakan atau kerugian di dalam wilayah Pihak Pejanji yang satu lagi yang berpunca dari:

(a) pengambilan harta mereka oleh angkatan bersenjatanya atau pihak berkuasanya; atau

(b) pemusnahan harta mereka oleh angkatan bersenjatanya atau pihak berkuasanya yang bukan bersebab dari tindakan membenteras atau tidak dikehendaki oleh perlunya keadaan itu,

hendaklah diberi restitusi atau pampasan mencukupi tidak kurang baiknya dari yang sepatutnya diberikan di bawah hal keadaan yang sama kepada pelabur Pihak Pejanji yang satu lagi atau kepada pelabur mana-mana Negara lain.

PERKARA 5

Mengambil balik

(1) Pelaburan yang dibuat oleh pelabur-pelabur satu Pihak Pejanji hendaklah tidak dimiliknegarakan, diambil balik atau sebaliknya tertakluk kepada sebarang langkah lain yang mempunyai kesan yang sama dengan memiliknegarakan atau mengambil balik (selepas ini disebut sebagai mengambil balik) di dalam wilayah Pihak Pejanji yang satu lagi kecuali untuk suatu tujuan awam dan terhadap pampasan yang segera, mencukupi dan berkesan. Mengambil balik hendaklah dijalankan atas suatu asas tidak berat sebelah menurut prosedur undang-undang.

(2) Pampasan tersebut hendaklah dikira bersamaan dengan nilai pasaran berpatutan bagi pelaburan yang diambil balik sejurus sebelum mengambil balik atau sebelum mengambil balik akan datang diketahui oleh orang ramai, yang mana lebih awal, hendaklah termasuk faedah pada kadar komersial yang boleh dikenakan atau kadar LIBOR, yang mana lebih tinggi, mulai dari tarikh mengambil balik sehingga tarikh pembayaran dan hendaklah dibuat tanpa kelengahan tidak wajar, boleh dihasilkan secara berkesan dan boleh tukar secara bebas dan boleh pindah.

(3) Pelabur-pelabur satu Pihak Pejanji yang terjejas oleh pengambilan balik hendaklah mempunyai hak untuk mengkaji semula melalui kehakiman atau pihak berkuasa bebas yang lain dari Pihak Pejanji yang satu lagi, mengenai kes mereka dan mengenai penilaian pelaburan mereka menurut prinsip-prinsip yang dinyatakan dalam Perkara ini.

(4) Jika sebelah Pihak Pejanji mengambil balik harta sesebuah syarikat yang diperbadankan atau ditubuhkan di bawah undang-undang dan peraturan-peraturannya, dan yang didalamnya pelabur-pelabur dari Pihak Pejanji yang satu lagi mempunyai syer, debentur atau bentuk penyertaan lain, maka peruntukan-peruntukan Perkara ini hendaklah dikenakan.

PERKARA 6

Pemindahan

(1) Setiap Pihak Pejanji hendaklah memberi jaminan kepada pelabur-pelabur dari Pihak Pejanji yang satu lagi bagi pemindahan percuma pelaburan dan pulangan mereka. Pemindahan tersebut hendaklah termasuk, terutama sekali, tetapi bukanlah khasnya:

(a) untung bersih, keuntungan modal, dividen, faedah, royalti, bayaran dan sebarang pendapatan lain yang ada yang terakru dari pelaburan itu;

(b) hasil yang terakru dari jualan atau pembubaran sepenuh atau separa pelaburan itu;

(c) tabung bagi pembayaran balik wang pinjaman yang berkenaan dengan pelaburan;

(d) pendapatan rakyat Pihak Pejanji yang satu lagi yang dibenarkan bekerja berkenaan pelaburan di dalam wilayahnya;

(e) tabung tambahan yang perlu bagi memelihara atau mengembangkan pelaburan yang ada;

(f) pampasan menurut Perkara 4 dan 5; dan

(g) bayaran-bayaran menurut Perkara 7.

(2) Semua pemindahan di bawah Perjanjian ini hendaklah dibuat dalam pertukaran matawang bebas, tanpa sekatan dan tanpa kelengahan tidak wajar, pada kadar pasaran pertukaran, terpakai pada tarikh pemindahan itu.

(3) Jika sekiranya suatu kadar pasaran pertukaran tidak ada, kadar pertukaran hendaklah bersamaan dengan kadar silang yang diperolehi dari kadar-kadar itu yang boleh digunakan oleh Tabung Kewangan Antarabangsa, pada tarikh pembayaran, bagi tukaran matawang berkenaan ke dalam Hak Pengeluaran Khas.

PERKARA 7

Subrogasi

(1) Jika satu Pihak Pejanji atau ejennya yang dilantik (Pihak Pejanji pertama), membuat suatu pembayaran kepada mana-mana pelaburnya di bawah suatu tanggung rugi yang diberikan berkaitan dengan pelaburan di dalam wilayah Pihak Pejanji yang satu lagi (Pihak Pejanji kedua), Pihak Pejanji kedua hendaklah mengiktiraf:

(a) penyerahanhak kepada Pihak Pejanji pertama di bawah undang-undang atau menurut suatu urusniaga di sisi undang-undang bagi semua hak atau tuntutan pelabur yang ditanggung rugi; dan

(b) bahawa Pihak Pejanji pertama adalah berhak untuk menjalankan hak-hak tersebut dan untuk menguatkuasakan tuntutan itu berdasarkan subrogasi, setakat yang sama sebagaimana pelabur yang ditanggungrugi.

(2) Pihak Pejanji pertama hendaklah berhak dalam semua hal keadaan kepada layanan yang sama berkenaan dengan:

(a) hak dan tuntutan yang dikehendaki berdasarkan penyerahan hak; dan

(b) sebarang bayaran yang diterima menurut kuasa hak dan tuntutan itu,

sebagaimana pelabur yang ditanggungrugi diberi hak untuk menerima berdasarkan Perjanjian ini berkaitan dengan pelaburan berkenaan dan pulangan yang berkenaan dengannya.

PERKARA 8

Penyelesaian Pertikaian Pelaburan di antara suatu Pihak Pejanji dan Pelabur dari Pihak Pejanji yang satu lagi

(1) Pertikaian pelaburan di antara satu Pihak Pejanji dan pelabur dari Pihak Pejanji yang satu lagi hendaklah, setakat yang boleh, diselesaikan secara persahabatan di antara pihak-pihak yang bertikai.

(2) Remedi tempatan di bawah undang-undang dan peraturan-peraturan satu Pihak Pejanji yang di dalam wilayahnya pelaburan dibuat hendaklah diadakan bagi pelabur-pelabur dari Pihak Pejanji yang satu lagi atas dasar layanan yang tidak kurang baiknya dengan yang diberikan kepada pelaburan yang dibuat oleh pelabur-pelaburnya sendiri atau pelabur-pelabur mana-mana Negara ketiga, yang mana lebih baik kepada pelabur.

(3) Jika suatu pertikaian tidak dapat diselesaikan dalam masa enam (6) bulan dari tarikh apabila pertikaian itu berbangkit, ia hendaklah, atas permintaan pelabur dari Pihak Pejanji yang satu lagi, dikemukakan untuk timbangtara. Timbangtara hendaklah dijalankan menurut Aturan Timbangtara Suruhanjaya Negara-Negara Bersatu bagi Undang-Undang Perdagangan Antarabangsa kecuali pihak-pihak yang bertikai bersetuju sebaliknya.

(4) Jika sekiranya kedua-dua Pihak Pejanji yang menjadi Negara-Negara Pejanji Konvensyen Penyelesaian Pertikaian Pelaburan di antara Negara-Negara dan Rakyat Negara-Negara pada 18 Mac, 1965 (Konvensyen ICSID), bertikai di bawah Perkara ini hendaklah dikemukakan untuk timbangtara di bawah Konvensyen ICSID kecuali pihak-pihak yang bertikai bersetuju sebaliknya.

(5) Tiap-tiap Pihak Pejanji dengan ini bersetuju kepada pengemukaan suatu pertikaian untuk timbangtara menurut prosedur-prosedur yang dinyatakan dalam Perjanjian ini.

(6) Award yang dibuat hasil dari perenggan (3) atau (4) Perkara ini hendaklah muktamad dan terikat kepada pihak-pihak yang bertikai. Pelabur boleh meminta penguatkuasaan suatu award timbangtara menurut Konvensyen mengenai Pengiktirafan dan Penguatkuasaan Award Timbangtara Asing pada 10 Jun 1958 atau Konvensyen ICSID, jika kedua-dua Pihak Pejanji adalah pihak-pihak kepada perjanjian tersebut.

(7) Dalam masa prosiding timbangtara atau penguatkuasaan suatu award, Pihak Pejanji yang terlibat dalam pertikaian itu hendaklah tidak membangkitkan bantahan bahawa pelabur Pihak Pejanji yang satu lagi telah menerima pampasan di bawah suatu kontrak insurans berkaitan dengan semua atau sebahagian dari kerugiannya.

PERKARA 9

Penyelesaian Pertikaian di antara Pihak-Pihak Pejanji

(1) Pertikaian di antara Pihak-Pihak Pejanji mengenai tafsiran atau pengenaan Perjanjian hendaklah, jika perlu, diselesaikan melalui rundingan diplomatik.

(2) Jika sebarang pertikaian tidak dapat diselesaikan dalam masa enam (6) bulan, pertikaian itu hendaklah, atas permintaan salah satu Pihak Pejanji, dikemukakan kepada Tribunal Timbangtara ad hoc menurut peruntukan-peruntukan Perkara ini.

(3) Tribunal Timbangtara tersebut hendaklah ditubuhkan bagi tiap-tiap satu kes dengan cara yang berikut: Dalam masa dua (2) bulan dari tarikh permintaan bagi timbangtara diterima, tiap-tiap Pihak Pejanji hendaklah melantik seorang ahli Tribunal. Kedua-dua orang ahli ini hendaklah kemudiannya memilih seorang rakyat Negara ketiga, yang menikmati hubungan diplomatik dengan kedua-dua Pihak Pejanji, yang akan dilantik menjadi Pengerusi Tribunal atas kebenaran kedua-dua Pihak Pejanji. Pengerusi hendaklah dilantik dalam masa dua (2) bulan dari tarikh lantikan dua ahli lain itu.

(4) Jika dalam tempoh-tempoh yang dinyatakan dalam perenggan (3) Perkara ini lantikan-lantikan yang diperlukan masih belum dibuat, suatu permintaan boleh dibuat oleh salah satu Pihak Pejanji kepada Presiden Mahkamah Kehakiman Antarabangsa untuk membuat lantikan-lantikan tersebut. Jika Presiden itu adalah rakyat salah satu Pihak Pejanji atau sebaliknya ditegah dari menunaikan tugas tersebut, Timbalan Presiden hendaklah dipelawa untuk membuat lantikan-lantikan itu. Jika Timbalan Presiden juga rakyat salah satu Pihak Pejanji atau ditegah dari menunaikan tugas tersebut, maka ahli Mahkamah Kehakiman Antarabangsa yang terkanan sekali di bawahnya yang bukan rakyat salah satu Pihak Pejanji hendaklah dipelawa untuk membuat lantikan-lantikan itu.

(5) Tribunal Timbangtara hendaklah mencapai keputusannya dengan undi yang terbanyak. Keputusan tersebut hendaklah terikat kepada kedua-dua Pihak Pejanji.

(6) Setiap Pihak Pejanji hendaklah menanggung kos penimbangtaranya sendiri dan peguamnya dalam prosiding-prosiding timbangtara tersebut. Kos bagi Pengerusi dan kos selebihnya hendaklah ditanggung sama rata oleh kedua-dua belah Pihak Pejanji. Tribunal boleh, walau bagaimanapun, dalam keputusannya mengarahkan bahawa perkadaran kos yang lebih tinggi boleh ditanggung oleh salah satu dari kedua-dua belah Pihak Pejanji.

(7) Tribunal Timbangtara hendaklah menentukan prosedurnya sendiri.

PERKARA 10

Pengenaan Aturan-Aturan Lain

(1) Jika perjanjian-perjanjian dua hala atau berbilang hala di mana Pihak-Pihak Pejanji menjadi pihak-pihak kepada perjanjian itu, memberi layanan yang lebih baik dari Perjanjian ini berkaitan dengan pelaburan yang dibuat oleh salah satu Pihak Pejanji atau pelabur-pelaburnya, perjanjian-perjanjian tersebut hendaklah dikenakan setakat mana layanan itu lebih baik dari Perjanjian ini.

(2) Tiap-tiap Pihak Pejanji hendaklah mematuhi sebarang kewajipan lain yang dipikulnya berkenaan dengan pelaburan-pelaburan yang dibuat di dalam wilayahnya oleh pelabur-pelabur dari Pihak Pejanji yang satu lagi.

(3) Jika layanan yang akan diberikan oleh satu Pihak Pejanji kepada pelabur-pelabur dari Pihak Pejanji yang satu lagi menurut undang-undangnya dan peraturan-peraturannya atau peruntukan-peruntukan atau kontrak-kontrak tertentu lain lebih baik dari yang diberikan oleh Perjanjian ini, layanan yang lebih baik itu hendaklah diberikan.

PERKARA 11

Pengenaan Perjanjian

Perjanjian hendaklah dikenakan kepada semua pelaburan, sama ada dibuat sebelum atau selepas ia mula berkuatkuasa, tetapi hendaklah tidak dikenakan kepada sebarang pertikaian mengenai pelaburan yang diselesaikan sebelum Perjanjian ini mula berkuatkuasa.

PERKARA 12

Mula Berkuatkuasa, Tempoh dan Penamatan

(1) Perjanjian ini hendaklah mula berkuatkuasa tiga puluh (30) hari selepas pemberitahuan terakhir secara bertulis bahawa Pihak-Pihak Pejanji telah memenuhi semua kehendak undang-undang bagi penguatkuasaan Perjanjian ini.

(2) Perjanjian ini hendaklah terus berkuatkuasa bagi suatu tempoh selama sepuluh (10) tahun dan hendaklah terus berkuatkuasa selepas itu yang tidak terhad melainkan salah satu Pihak Pejanji memberi notis secara bertulis kepada Pihak Pejanji yang satu lagi satu tahun lebih awal mengenai niatnya untuk menamatkan Perjanjian ini.

(3) Berkaitan dengan pelaburan-pelaburan yang dibuat sebelum tarikh penamatan Perjanjian ini, peruntukan-peruntukan Perkara 1 hingga 11 dari Perjanjian ini hendaklah terus berkuatkuasa bagi tempoh selama limabelas (15) tahun lagi dari tarikh Perjanjian ini ditamatkan.

(4) Perjanjian ini boleh dikaji semula dengan bersetujuan bersama. Sebarang kajian semula atau penamatan Perjanjian ini hendaklah dilaksanakan tanpa menjejaskan sebarang hak atau kewajipan yang terakru atau yang diberikan di bawah Perjanjian ini sebelum tarikh kuatkuasa kajian semula atau penamatan tersebut.

PADA MENYAKSIKANNYA, wakil-wakil yang bertandatangan di bawah ini, yang sempurna diberi kuasa oleh Kerajaan-Kerajaan mereka masing-masing, telah menandatangani Perjanjian ini.

DIPERBUAT dalam dua salinan di Bandar Seri Begawan, Negara Brunei Darussalam pada **14 Nobember 2000** dalam bahasa-bahasa Melayu, Korea dan Inggeris, semua naskhah adalah sama sahnya. Jika terdapat sebarang perbezaan tafsiran, maka naskhah dalam bahasa Inggeris hendaklah dipakai.

BAGI PIHAK KERAJAAN
REPUBLIK KOREA

BAGI PIHAK KERAJAAN
KEBAWAH DULI YANG MAHA MULIA
PADUKA SERI BAGINDA SULTAN
DAN YANG DI-PERTUAN
NEGARA BRUNEI DARUSSALAM

[TRANSLATION – TRADUCTION]

ACCORD ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE DE CORÉE ET LE GOUVERNEMENT DE SA MAJESTÉ LE SULTAN ET YANG DI-PERTUAN DU BRUNÉI DARUSSALAM RELATIF À L'ENCOURAGEMENT ET À LA PROTECTION RÉCIPROQUE DES INVESTISSEMENTS

Le Gouvernement de la République de Corée et le Gouvernement de Sa Majesté le Sultan et Yang Di-Pertuan du Brunéi Darussalam (ci-après dénommés « Parties contractantes »),

Désireux de créer les conditions favorables à une plus grande coopération économique entre les deux pays, notamment en ce qui concerne les investissements réalisés par des investisseurs de l'une des Parties contractantes sur le territoire de l'autre Partie contractante, sur la base de l'égalité et du bénéfice mutuel,

Conscients de ce que l'encouragement et la protection réciproques de tels investissements par des accords internationaux auront pour effet de stimuler les initiatives commerciales et d'accroître la prospérité des deux pays,

Conscients de l'importance du transfert de technologie et du développement des ressources humaines découlant de tels investissements,

Sont convenus de ce qui suit :

Article premier. Définitions

Aux fins du présent Accord :

1. Le terme « investissements » s'entend de tous les types d'avoirs investis par des investisseurs d'une des Parties contractantes sur le territoire de l'autre Partie contractante, conformément à la législation de cette dernière, et inclut en particulier, mais non exclusivement :

a) les biens meubles et immeubles et tous les autres droits de propriété tels qu'hypothèques, privilèges, baux ou gages;

b) les actions, parts et autres formes de participation au capital d'une société ou entreprise commerciale et les droits ou intérêts qui en découlent, ainsi que les titres ou obligations émis par une Partie contractante;

c) les créances pécuniaires et créances sur toute prestation contractuelle en rapport avec un investissement ayant une valeur économique;

d) les droits de propriété intellectuelle, y compris les droits d'auteur, brevets, marques déposées, marques de fabrique, plans industriels, procédés techniques, secrets du métier, connaissances techniques, ainsi que la clientèle; et

e) les concessions commerciales ayant une valeur économique accordées par la loi ou au titre d'un contrat, y compris les concessions relatives à la prospection, la culture, l'extraction ou l'exploitation de ressources naturelles.

Toute modification de la forme sous laquelle les actifs ou les droits sont investis ou réinvestis ne porte pas atteinte à leur caractère d'investissement.

2. Le terme « revenu » s'entend du montant provenant d'un investissement et incluent en particulier, mais non exclusivement, les bénéfices, intérêts, plus-values, dividendes, redevances et droits de tous types.

3. Le terme « investisseur » s'entend de tout ressortissant ou de toute personne morale d'une Partie contractante qui réalise des investissements sur le territoire de l'autre Partie contractante :

a) le terme « ressortissants » désigne les personnes physiques ayant obtenu le statut de ressortissant d'une Partie contractante conformément à ses lois; et

b) l'expression « personne morale » s'entend de toute entité telle qu'une société, une institution publique, une autorité, une fondation, une société de personnes, une firme, un établissement, une organisation, une compagnie ou une association établie ou constituée conformément aux lois et règlements de cette Partie contractante, que ses activités aient un but lucratif ou non, et qu'elles soient organisées avec une responsabilité limitée ou illimitée.

4. Le terme « territoire » désigne :

a) pour la République de Corée, le territoire de la République de Corée, ainsi que les zones maritimes, y compris les fonds marins et le sous-sol qui jouxtent la limite externe de la mer territoriale, sur lesquelles la République de Corée exerce, conformément au droit international et à sa législation, ses droits souverains ou sa juridiction aux fins de la prospection et de l'exploitation des ressources naturelles contenues dans ces zones.

b) pour le Brunéi Darussalam, le territoire du Brunéi Darussalam et les zones maritimes adjacentes à la côte du Brunéi Darussalam dans la mesure où le Brunéi Darussalam peut exercer ses droits souverains ou sa juridiction conformément au droit international et à sa législation.

Article 2. Promotion et protection des investissements

1. Chaque Partie contractante encourage les investisseurs de l’autre Partie contractante à investir sur son territoire, leur fournit les conditions favorables pour ce faire, et accepte de tels investissements conformément à ses lois et règlements en vigueur.

2. Les investissements effectués par les investisseurs de chaque Partie contractante jouissent à tout moment, sur le territoire de l'autre Partie contractante, d'un traitement juste et équitable, ainsi que d'une protection et d'une sécurité pleine et entière. Ni l’une ni l’autre des Parties contractantes ne compromet, par des mesures déraisonnables ou discriminatoires, la gestion, la conservation, l’usage, la jouissance ou la cession d’investissements réalisés sur son territoire par des investisseurs de l’autre Partie contractante.

Article 3. Traitement des investissements

1. Chaque Partie contractante accorde, sur son territoire, aux investissements et aux revenus des investisseurs de l'autre Partie contractante un traitement au moins aussi favorable que celui qu'elle accorde aux investissements et aux revenus de ses propres investisseurs ou aux investissements et revenus des investisseurs de tout État tiers, l'option la plus favorable aux investisseurs de l'autre Partie contractante étant retenue.

2. Chaque Partie contractante accorde, sur son territoire, aux investisseurs de l’autre Partie contractante, en ce qui concerne l'exploitation, la gestion, le maintien, l’utilisation, la jouissance ou la cession de leurs investissements, un traitement qui n'est pas moins favorable que celui qu’elle

accorde à ses propres investisseurs ou aux investisseurs de tout État tiers, le traitement le plus favorable pour les investisseurs de l'autre Partie contractante étant retenu.

3. Les dispositions des paragraphes 1 et 2 ne peuvent être interprétées comme obligeant l'une des Parties contractantes à accorder aux investisseurs de l'autre Partie contractante un traitement, une préférence ou un privilège qui peuvent être accordés du fait d'un accord ou d'un mécanisme international concernant entièrement ou essentiellement la fiscalité.

4. Ce traitement ne s'applique pas aux privilèges que les Parties contractantes accordent aux investisseurs d'États tiers en vertu de leur participation présente ou future à une union douanière ou économique, à un marché commun, à une zone de libre-échange ou à des accords internationaux similaires.

Article 4. Indemnisation des dommages

1. Les investisseurs de l'une des Parties contractantes dont les investissements auraient subi des pertes du fait d'une guerre ou d'un autre conflit armé, d'un état d'urgence national, d'une révolte, d'une insurrection, d'une émeute ou d'une situation analogue sur le territoire de l'autre Partie contractante bénéficient, de la part de cette autre Partie contractante, d'un traitement qui n'est pas moins favorable que celui qu'elle accorde à ses propres investisseurs ou à ceux d'un État tiers en ce qui concerne la restitution, l'indemnisation, la réparation ou tout autre forme de règlement.

2. Sans préjudice des dispositions du paragraphe 1, les investisseurs d'une Partie contractante qui, dans l'une des situations visées dans ce paragraphe, subissent des dommages ou des pertes sur le territoire de l'autre Partie contractante résultant :

a) de la réquisition de leurs biens par ses forces ou autorités; ou

b) de la destruction de leurs biens, par ses forces ou autorités, non causée par des combats ou non requise par la situation,

se verront accorder leur restitution ou une indemnité raisonnable qui n'est pas moins favorable que celle qui serait accordée dans les mêmes circonstances à un investisseur de l'autre Partie contractante ou à un investisseur de tout autre État.

Article 5. Expropriation

1. Les investissements des investisseurs d’une Partie contractante sur le territoire de l’autre Partie contractante ne peuvent faire l'objet d’expropriation, de nationalisation ou d’autres mesures ayant des effets équivalents à ceux d’une expropriation ou d’une nationalisation (ci-après « expropriation »), sauf pour des raisons d’utilité publique et contre le paiement d'une indemnisation rapide, adéquate et effective. Les mesures d’expropriation sont prises dans des conditions non discriminatoires conformément aux procédures juridiques.

2. Cette indemnisation doit correspondre à la juste valeur marchande qu’avait l'investissement exproprié immédiatement avant que les mesures d’expropriation ne soient prises ou avant qu’elles ne soient rendues publiques, selon la première éventualité. L'indemnisation est assortie d'un intérêt au taux commercial en vigueur ou taux LIBOR, le taux le plus élevé étant appliqué, de la date d'expropriation jusqu'à la date de son paiement, est versée sans retard indu, et est effectivement réalisable et librement transférable.

3. Les investisseurs d'une Partie contractante affectés par les mesures d'expropriation ont droit à un examen rapide de leur affaire par un organe judiciaire ou toute autorité indépendante de l'autre Partie contractante et à l'évaluation de leurs investissements conformément aux principes énoncés dans le présent article.

4. Lorsqu'une Partie contractante exproprie les avoirs d'une société qui a été enregistrée ou constituée conformément à la législation et à la réglementation en vigueur et dans laquelle des investisseurs de l'autre Partie contractante détiennent des actions, des obligations ou d'autres formes de participation, les dispositions du présent article s'appliquent.

Article 6. Transferts

1. Chacune des Parties contractantes garantit aux investisseurs de l'autre Partie contractante le libre transfert de leurs investissements et du rendement de ces investissements. De tels transferts incluent en particulier, mais non exclusivement :

a) le montant net des bénéfices, les plus-values, dividendes, intérêts, redevances, droits, honoraires et commissions et tous autres revenus courants provenant de ces investissements;

b) le produit de la vente ou de la liquidation totale ou partielle des investissements;

c) les fonds destinés au remboursement des prêts relatifs aux investissements;

d) les rémunérations de ressortissants de l'autre Partie contractante qui sont autorisés à travailler sur son territoire en relation avec les investissements;

e) les fonds supplémentaires nécessaires à l'entretien ou à l'extension des investissements existants;

f) l'indemnité prévue aux articles 4 et 5; et

g) les paiements en vertu de l'article 7.

2. Tous les transferts en vertu du présent Accord sont effectués dans une monnaie librement convertible, sans restriction ni retard indu, au taux de change du marché en vigueur à la date du transfert.

3. En l'absence de marché des changes, le taux applicable sera le taux de change déterminé conformément aux règles du Fonds monétaire international à la date du paiement pour la conversion des monnaies en droits de tirage spéciaux.

Article 7. Subrogation

1. Si une Partie contractante, ou l'organisme qu'elle a désigné, (« la première Partie contractante ») verse un montant à l'un de ses investisseurs au titre d'une indemnité afférente à un investissement effectué sur le territoire de l'autre Partie contractante (« la seconde Partie contractante »), cette dernière reconnaît :

a) la cession à la première Partie contractante par voie de disposition légale ou d'acte juridique de tous les droits ou prétentions de l'investisseur indemnisé; et

b) que la première Partie contractante est autorisée à exercer ces droits et à faire valoir lesdites prétentions par voie de subrogation, dans la même mesure que l'investisseur indemnisé.

2. La première Partie contractante a droit dans tous les cas au même traitement concernant :

a) les droits et créances acquis en vertu de la cession; et

b) tous paiements reçus en application desdits droits et créances auxquels l'investisseur indemnisé avait droit en vertu du présent Accord à l'égard de l'investissement considéré et des revenus y afférents.

Article 8. Règlement des différends en matière d'investissement entre une Partie contractante et un investisseur de l'autre Partie contractante

1. Les différends relatifs à des investissements entre une Partie contractante et un investisseur de l'autre Partie contractante sont, dans la mesure du possible, réglés à l'amiable entre les parties au litige.

2. Les recours internes prévus par la législation et la réglementation d'une Partie contractante sur le territoire de laquelle l'investissement a été effectué sont ouverts aux investisseurs de l'autre Partie contractante sur la base d'un traitement qui n'est pas moins favorable que celui réservé aux investissements de ses propres investisseurs ou d'investisseurs de tout État tiers, si ce dernier est plus favorable aux investisseurs.

3. Si un différend ne peut pas être réglé dans un délai de six mois à partir de la date à laquelle il a été soulevé, il est soumis à l'arbitrage à la demande de l'investisseur de l'autre Partie contractante. À moins que les parties au différend n'en conviennent autrement, l'arbitrage est effectué conformément au Règlement d'arbitrage de la Commission des Nations Unies pour le droit commercial international.

4. Dans le cas où les deux Parties contractantes ont adhéré à la Convention pour le règlement des différends relatifs aux investissements entre États et ressortissants d'autres États du 18 mars 1965 (Convention CIRDI), les différends visés au présent article sont soumis à l'arbitrage conformément à la Convention CIRDI, à moins que les parties au différend n'en conviennent autrement.

5. Chacune des Parties contractantes consent par la présente à ce que les différends soient soumis à l'arbitrage conformément aux modalités établies dans le présent Accord.

6. La sentence prononcée en vertu des paragraphes 3 ou 4 est définitive et obligatoire pour les parties au différend. Un investisseur peut demander que soit appliquée une sentence arbitrale rendue en application de la Convention pour la reconnaissance et l'exécution des sentences arbitrales étrangères du 10 juin 1958 ou de la Convention CIRDI, si les deux Parties contractantes sont parties à ces instruments.

7. Pendant la procédure d'arbitrage ou l'application d'une sentence, la Partie contractante partie au différend ne peut objecter que l'investisseur de l'autre Partie contractante a été indemnisé au titre d'un contrat d'assurance couvrant tout ou partie de sa perte.

Article 9. Règlement des différends entre les Parties contractantes

1. Si possible, les différends entre les Parties contractantes concernant l'interprétation ou l'application du présent Accord sont réglés au moyen de consultations par la voie diplomatique.

2. Si un différend ne peut être réglé dans les six mois, il est soumis, à la demande de l'une ou l'autre Partie contractante, à un tribunal arbitral spécial constitué pour la circonstance conformément aux dispositions du présent article.

3. Le tribunal arbitral est constitué au cas par cas comme suit : dans les deux mois suivant la date de réception de la demande en arbitrage, chaque Partie contractante désigne un membre du tribunal. Ces deux membres choisissent ensuite un ressortissant d'un État tiers ayant des relations diplomatiques avec les deux Parties contractantes qui, avec l'accord de ces dernières, est nommé Président du tribunal. Le Président est nommé dans les deux mois suivant la date de la désignation des deux autres membres.

4. Si les nominations ne sont pas faites dans les délais prévus au paragraphe 3, l'une ou l'autre Partie contractante peut demander au Président de la Cour internationale de Justice de procéder à ces nominations. Si le Président est un ressortissant de l'une ou l'autre Partie contractante ou s'il est empêché, pour toute autre raison, de remplir cette fonction, le Vice-Président est invité à procéder aux nominations. Si le Vice-Président est également un ressortissant de l'une des Parties contractantes ou s'il est empêché d'assurer cette fonction, les nominations sont effectuées par le membre de la Cour internationale de Justice le plus ancien qui n'est pas un ressortissant de l'une ou l'autre Partie contractante.

5. Le tribunal arbitral statue à la majorité de ses membres. La décision arbitrale a force obligatoire pour les Parties contractantes.

6. Chacune des Parties contractantes prend à sa charge les frais afférents à l'activité de l'arbitre qu'elle a désigné, ainsi que les frais de sa défense dans la procédure arbitrale. Les frais du Président et les autres frais sont répartis à parts égales entre les Parties contractantes. Toutefois, le tribunal arbitral pourra, dans sa sentence, ordonner qu'une proportion plus importante des frais soit prise en charge par l'une des Parties contractantes.

7. Le tribunal arbitral déterminera sa propre procédure.

Article 10. Application d'autres dispositions

1. Lorsque des accords bilatéraux ou multilatéraux auxquels les Parties contractantes ont adhéré prévoient un traitement plus favorable aux investissements de l'une des Parties contractantes, ou aux investisseurs de celle-ci, que celui accordé par le présent Accord, ces accords s'appliquent dans la mesure où ils sont plus favorables que le présent Accord.

2. Chaque Partie contractante se conforme à toute obligation qui lui incombe à l'égard des investissements effectués sur son territoire par un investisseur de l'autre Partie contractante.

3. Dans le cas où le traitement accordé par l'une des Parties contractantes aux investisseurs de l'autre Partie contractante conformément à sa législation et à sa réglementation, ou à d'autres dispositions ou contrats spécifiques, est plus favorable que celui accordé par le présent Accord, le traitement le plus favorable s'applique.

Article 11. Application de l'Accord

L'Accord s'applique à tous les investissements, qu'ils aient été effectués avant ou après son entrée en vigueur. Il ne s'applique toutefois pas aux différends relatifs à des investissements qui ont été réglés avant son entrée en vigueur.

Article 12. Entrée en vigueur, durée et dénonciation

1. Le présent Accord entre en vigueur trente jours après la dernière notification écrite par laquelle les Parties contractantes s'informent qu'elles ont achevé les formalités légales à cet effet.

2. Le présent Accord est conclu pour une période de dix ans et demeurera en vigueur par la suite pour une durée indéfinie, à moins que l'une des Parties contractantes ne notifie à l'autre par écrit, un an à l'avance, son intention de le dénoncer.

3. Pour ce qui est des investissements effectués avant la date de dénonciation du présent Accord, les dispositions des articles 1 à 11 continueront de produire leurs effets pour une période supplémentaire de quinze ans à compter de la date de dénonciation.

4. Le présent Accord peut être révisé par consentement mutuel. Toute révision ou dénonciation de ses dispositions s'effectue sans préjudice de tout droit ou toute obligation découlant du présent Accord avant la date d'entrée en vigueur de ladite révision ou dénonciation.

EN FOI DE QUOI, les soussignés, à ce dûment autorisés par leurs Gouvernements respectifs, ont signé le présent Accord.

FAIT à Bandar Seri Begawan, le 14 novembre 2000, en double exemplaire, en langues coréenne, malaise et anglaise, tous les textes faisant également foi. En cas de divergence d'interprétation, le texte anglais prévaut.

Pour le Gouvernement de la République de Corée :

LEE JOUNG-BINN

Pour le Gouvernement de sa Majesté le Sultan
et Yang Di-Pertuan du Brunéi Darussalam :

MASNA BOLKIAH

No. 49670

Republic of Korea
and
Brunei Darussalam

Agreement between the Government of the Republic of Korea and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam for air services between and beyond their respective territories (with annex). Seoul, 5 August 1992

Entry into force: *30 July 2003 by notification, in accordance with article 19*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *Republic of Korea, 6 July 2012*

République de Corée
et
Brunéi Darussalam

Accord entre le Gouvernement de la République de Corée et le Gouvernement de Sa Majesté le Sultan et Yang Di-Pertuan du Brunéi Darussalam relatif aux services aériens entre leurs territoires respectifs et au-delà (avec annexe). Séoul, 5 août 1992

Entrée en vigueur : *30 juillet 2003 par notification, conformément à l'article 19*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 6 juillet 2012*

[ENGLISH TEXT – TEXTE ANGLAIS]

AGREEMENT BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF KOREA AND

THE GOVERNMENT OF HIS MAJESTY THE SULTAN AND YANG DI-PERTUAN OF BRUNEI DARUSSALAM

FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

The Government of the Republic of Korea and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam (hereinafter referred to as "the Contracting Parties"),

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944, and

Desiring to conclude an Agreement for the purpose of establishing and operating air services between and beyond their respective territories,

Have agreed as follows:

Article 1
Definitions

For the purpose of this Agreement, unless the context otherwise requires:

(a) the term "the Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944, and includes any annex adopted under Article 90 of that Convention and any amendment of the annexes or Convention under Articles 90 and 94 thereof so far as these annexes and amendments have been effective for both Contracting Parties;

(b) the term "aeronautical authorities" means, in the case of the Republic of Korea, the Minister of Transportation and in the case of Brunei Darussalam, the Minister of Communications or in both cases any other person or body authorized to perform the functions exercised at present by the said authorities;

(c) the term "designated airline" means any airline which one Contracting Party has designated, by written notification to the other Contracting Party, for the operation of air services on the routes specified in the Annex of this Agreement, and to which the appropriate operating permission has been given by that other Contracting Party, in accordance with Article 3 of this Agreement.

(d) the term "territory" in relation to a State has the meaning assigned to it in Article 2 of the Convention;

(e) the terms "air service", "international air service", "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in Article 96 of the Convention;

(f) the term "capacity" in relation to an aircraft means the payload of that aircraft available on a route or section of a route;

(g) the term "capacity" in relation to an agreed service means the capacity of the aircraft used on such service multiplied by the frequency operated by such aircraft over a given period and route or section of a route;

(h) the term "carriage of traffic" means carriage of passengers, cargo and mail; and

(i) the term "Annex" means the Annex to this Agreement or as amended in accordance with the provisions of Article 16 of this Agreement.

The Annex forms an integral part of this Agreement, and all references to the Agreement shall include references to the Annex except where otherwise explicitly provided.

Article 2
Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement to enable its designated airlines to establish and operate scheduled international air services on the routes specified in the Annex. Such services and routes are hereinafter called "the agreed services" and "the specified routes" respectively.

2. Subject to the provisions of this Agreement, the designated airlines of each Contracting Party shall enjoy, while operating the agreed services on the specified routes, the following rights:

(a) to fly without landing across the territory of the other Contracting Party;

(b) to make stops in the territory of the other Contracting Party for non-traffic purposes; and

(c) to take up and put down passengers, cargo and mail at any point on the specified routes subject to the provisions contained in the Annex.

3. Nothing in paragraph 2 of this Article shall be deemed to confer on the designated airlines of one Contracting Party the rights of taking up, in the territory of the other Contracting Party, passengers, cargo or mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.

Article 3
Designation of Airlines

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one airline or airlines for the purpose of operating the agreed services on the specified routes.

2. On receipt of such designations, the other Contracting Party shall subject to the provisions of paragraphs 3 and 4 of this Article, grant without delay to the designated airlines the appropriate operating authorization.

3. The aeronautical authorities of one Contracting Party may require the designated airlines of the other Contracting Party to satisfy them that they are qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.

4. Each Contracting Party shall have the right to refuse to accept the designation of an airline or airlines, or to refuse to grant the operating authorization referred to in paragraph 2 of this Article, or to impose such conditions as it may deem necessary on the exercise by the designated airlines of the rights specified in Article 2 of this Agreement, in any case where the said Contracting Party is not satisfied that substantial ownership and effective control of those airlines are vested in the Contracting Party designating the airlines or in its nationals.

5. The airlines designated and authorized in accordance with the provisions of paragraphs 1 and 2 of this Article may begin to operate the agreed services, provided that the capacity is regulated under Article 9 of this Agreement and that tariffs established in accordance with the provisions of Article 10 of this Agreement are in force in respect of those services.

Article 4
Revocation and Suspension of Rights

1. Each Contracting Party shall have the right to revoke an operating authorization or to suspend the exercise of the rights specified in Article 2 of this Agreement by the airlines designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights:

(a) in any case where it is not satisfied that substantial ownership and effective control of those airlines are vested in the Contracting Party designating the airlines or in nationals of such Contracting Party; or

(b) in case of failure by those airlines to comply with the laws or regulations of the Contracting Party granting those rights; or

(c) in case the airlines otherwise fail to comply with the provisions of this Agreement.

2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 1 of this Article is essential to prevent further infringements of laws or regulations, such right shall be exercised by each Contracting Party only after consultation with the other Contracting Party.

Article 5
Customs Duties and other Similar Charges

1. Aircraft operated on international services by the designated airlines of the Contracting Parties, as well as their regular equipment, spare parts, supplies of fuel and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, inspection fees and other similar charges on arriving in the territory of the other Contracting Party in accordance with the provisions of the laws and regulations in force of each Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are reexported.

2. There shall also be exempt from the same duties, fees and charges, in accordance with the provisions of the laws and regulations in force of each Contracting Party, with the exception of charges corresponding to the service performed:

(a) aircraft stores taken on board in the territory of either Contracting Party, within the limits fixed by the competent authorities of the said Contracting Party, and for use on board aircraft engaged in the agreed services of the other Contracting Party;

(b) spare parts brought into the territory of either Contracting Party for the maintenance or repair of aircraft used on the agreed services by the designated airlines of the other Contracting Party;

(c) fuel and lubricants destined to supply aircraft operated on the agreed services by the designated airlines of the other Contracting Party, even when those supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

Materials referred to in sub-paragraphs (a), (b) and (c) of this paragraph may be required to be kept under customs supervision or control.

3. The regular airborne equipment, as well as the materials and supplies retained on board the aircraft of either Contracting Party, may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of that other Contracting Party. In such case, they may be placed under the supervision of the said authorities up to such time as they are reexported or otherwise disposed of in accordance with customs regulations.

Article 6
Applicability of Laws and Regulations

1. The laws and regulations of one Contracting Party governing entry into or departure from its territory of an aircraft engaged in international air navigation or flights of such aircraft over that territory shall be applied to the aircraft of the designated airlines of the other Contracting Party and shall be complied with by such aircraft upon entering into or departing from, and while within the territory of the first Contacting Party.

2. The laws and regulations of one Contracting Party governing entry into, stay in, transit through or departure from its territory of passengers, crew, cargo and mail, such as those concerning the formalities of entry and exit, of emigration and immigration, customs, currency, medical and quarantine measures, shall be applied to the passengers, crew, cargo or mail carried by the aircraft of the designated airlines of the other Contracting Party while within the territory of the first Contracting Party.

Article 7
Establishment of Airline Representative Offices

The designated airlines of each Contracting Party shall have the right to establish representative offices in the territory of the other Contracting Party. Those representative offices may include commercial operational and technical staff.

The representative offices, representatives and staff shall be established in accordance with the laws and regulations in force in the territory of that other Contracting Party.

Article 8
Recognition of Certificates and Licenses

1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by either Contracting Party shall, during the period of their validity, be recognized as valid by the other Contracting Party.

2. Each Contracting Party reserves the rights, however, not to recognize as valid, for the purpose of flights over its own territory, certificates of competency and licenses granted to its own nationals or rendered valid for them by the other Contracting Party or by any other State.

Article 9
Capacity Regulations

1. There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services on the specified routes.

2. In operating the agreed services, the designated airlines of each Contracting Party shall take into account the interests of the designated airlines of the other Contracting Party so as not to affect unduly the services which the latter provides on all or part of the same routes.

3. On any specified route the capacity provided by the designated airlines of one Contracting Party together with the capacity provided by the designated airlines of the other Contracting Party shall be maintained in reasonable relationship to the requirements of the public for air transport on that route.

4. The agreed services provided by the designated airlines of each Contracting Party shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to the current and foreseeable traffic demands to and from the territory of the Contracting Party designating the airlines. The carriage of traffic embarked or

disembarked in the territory of the other Contracting Party to and from points on the specified routes in the territories of States other than that designating the airlines shall be of supplementary character. The right of such airlines to carry traffic between points of the specified routes located in the territory of the other Contracting Party and points in third countries shall be exercised in the interests of an orderly development of international air transport in such a way that the capacity is related to:

(a) the traffic demand to and from the territory of the Contracting Party designating the airlines;

(b) the traffic demand existing in the areas through which the agreed services pass, taking account of local and regional air services; and

(c) the requirements of through airline operation.

Article 10
Tariffs

1. For the purpose of the following paragraphs, the term "tariffs" means the prices to be paid for the carriage of passengers and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services but excluding remuneration and conditions for the carriage of mail.

2. The tariffs on any agreed services shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, characteristics of services such as standards of speed and accommodation, and the tariffs of other airlines for any part of the specified routes.

3. The tariffs shall be fixed in accordance with the following provisions:

(a) The tariffs referred to in paragraph 2 of this Article together with the rates of agency commission used in conjunction with them shall, if possible, be agreed in respect of each of the specified routes and sectors thereof between the designated airlines concerned, and such agreement shall, where possible, be reached through the rate-fixing machinery of the International Air Transport Association;

(b) The tariffs so agreed shall be submitted for the approval of the aeronautical authorities of both Contracting Parties at least sixty (60) days before the proposed date of their introduction. In special cases, this period may be reduced, subject to the agreement of the said authorities;

(c) This approval may be given expressly. If neither of the aeronautical authorities has expressed disapproval within thirty (30) days from the date of submission, in accordance with paragraph 3 (b) of this Article, these tariffs shall be considered as approved. In the event of the period for submission being reduced, as provided for in paragraph 3 (b), the aeronautical authorities may agree that the period within which any disapproval must be notified shall be less than thirty (30) days.

(d) If a tariff cannot be agreed upon in accordance with the provisions of paragraph 3 (a) of this Article or if during the period applicable in accordance with paragraph 3 (c) of this

Article, the aeronautical authorities of one Contracting Party give the aeronautical authorites of the other Contracting Party notice of their disapproval of a tariff agreed in accordance with the provisions of paragraph 3 (c) of this Article, the aeronautical authorities of the two Contracting Parties shall try to determine the tariff by mutual agreement.

(e) If the aeronautical authorities cannot agree on any tariff submitted to them under paragraph 3 (b) of this Article, or on the determination of any tariff under paragraph 3 (d) of this Article, the dispute shall be settled in accordance with the provisions of Article 14 of this Agreement.

(f) A tariff established in accordance with the provisions of this Article shall remain in force until a new tariff has been established. Nevertheless, a tariff shall not be prolonged by virtue of this paragraph for more than twelve (12) months after the date on which it would otherwise have expired.

Article 11
Transfer of Revenues

Each Contracting Party shall grant to the designated airlines of the other Contracting Party the right of transfer of excess of receipts over expenditure earned by the airlines in the territory of the first Contracting Party in connection with the carriage of passengers, mail and cargo, in any of freely convertible currencies in accordance with the foreign exchange regulations in force.

Article 12
Provision of Statistics

The aeronautical authorities of one Contracting Party shall supply to the aeronautical authorities of the other Contracting Party, at their request, such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airlines of the first Contracting Party. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services and the points of embarkation and disembarkation of such traffic.

Article 13
Consultation

It is the intention of both Contracting Parties that there shall be frequent consultations between the aeronautical authorities of the Contracting Parties to ensure close collaboration in all matters affecting the fulfilment of this Agreement.

Article 14
Settlement of Disputes

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavour to settle it by negotiation.

2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body. If they do not so agree, the dispute may at the request of either Contracting

Party be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through the diplomatic channel requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of sixty (60) days. If either Contracting Party fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organization may at the request of either Contracting Party appoint an arbitrator or arbitrators as the case requires. In such case, the third arbitrator shall be a national of a third State and shall act as president of the arbitral tribunal.

3. The Contracting Parties shall comply with any decision given, including any interim recommendation made under paragraph 2 of this Article.

4. The arbitration proceedings shall be heard at a location to be jointly determined by the Contracting Parties. The expenses of each national arbitrators shall be borne by the respective Contracting Party. All other expenses of the arbitral tribunal, including the fees and expenses of the third arbitrator, shall be shared equally by the Contracting Parties.

5. If and so long as either Contracting Party or a designated airline of either Contracting Party fails to comply with the requirements of paragraph 3 of this Article, the other Contracting Party may limit or revoke any right which it has granted by virtue of this Agreement.

Article 15
Security

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, or any other convention on aviation security to which both Contracting Parties shall become members.

2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities and any other threat to the security of civil aviation.

3. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as annexes to the Convention to the extent that such security provisions are applicable to the Contracting Parties; and they shall require that operators of aircraft of their registry, or operators of aircraft who

have their principal place of business or permanent residence in their territories, and the operators of airports in their territories, act in conformity with such aviation security provisions.

4. Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3 of this Article required by the other Contracting Party for entry into, departure from, or while within, the territory of the other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

Article 16
Amendment

1. If either Contracting Party considers it desirable to amend any provisions of this Agreement, it may at any time request consultation

with the other Contracting Party. Such consultation may be through discussions or by correspondence, and shall begin within a period of sixty (60) days from the date of receipt of the request. Any amendments so agreed shall come into force when they have been confirmed by an exchange of diplomatic notes.

2. Amendments of the Annex may be made by direct agreement between the aeronautical authorities of the Contracting Parties and confirmed by an exchange of diplomatic notes.

3. If a general multilateral convention or agreement concerning air transport comes into force in respect of both Contracting Parties, this Agreement shall be amended so as to conform with the provisions of such convention or agreement.

Article 17
Termination

Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case this Agreement shall be terminated twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

Article 18
Registration

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

Article 19
Entry into Force

This Agreement shall enter into force on the date when both Contracting Parties, through diplomatic channels, notify each other that they have completed internal legal procedures necessary for its entry into force.

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

Done at Seoul on this 5th day of August 1992 in duplicate in the English language. An official translation of the Agreement into Korean and Malay languages will be exchanged through diplomatic channels.

FOR THE GOVERNMENT OF
THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF HIS
MAJESTY THE SULTAN AND YANG
DI-PERTUAN OF BRUNEI DARUSSALAM

A N N E X

SECTION A

Routes to be operated in both directions by the designated airline or airlines of the Republic of Korea:

Points of Origin: Points in the Republic of Korea

Intermediate Points: Points to be specified later on

Points of Destination: Points in Brunei Darussalam

Beyond Points: Points to be specified later on

SECTION B

Routes to be operated in both directions by the designated airline or airlines of Brunei Darussalam:

Points of Origin: Points in Brunei Darussalam

Intermediate Points: Points to be specified later on

Points of Destination: Points in the Republic of Korea

Beyond Points: Points to be specified later on

Notes:

1. The designated airlines of both Contracting Parties may, on all or any flights, omit calling at any of the above points provided that the agreed services on the route begin at the points of origin in the respective countries.

2. The intermediate points, beyond points and the exercise of 5th freedom traffic rights (both to and from intermediate points and to and from points beyond) shall be subject to an agreement between the two aeronautical authorities.

[TRANSLATION – TRADUCTION]

ACCORD ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE DE CORÉE ET LE GOUVERNEMENT DE SA MAJESTÉ LE SULTAN ET YANG DI-PERTUAN DU BRUNÉI DARUSSALAM RELATIF AUX SERVICES AÉRIENS ENTRE LEURS TERRITOIRES RESPECTIFS ET AU-DELÀ

Le Gouvernement de la République de Corée et le Gouvernement de Sa Majesté le Sultan et Yang Di-Pertuan du Brunéi Darussalam (ci-après dénommés « les Parties contractantes »),

Étant parties à la Convention relative à l'aviation civile internationale, ouverte à la signature à Chicago le 7 décembre 1944, et

Désireux de conclure un accord en vue d'établir et d'exploiter des services aériens entre leurs territoires respectifs et au-delà,

Sont convenus de ce qui suit :

Article premier. Définitions

Aux fins du présent Accord, à moins que le contexte ne requière une interprétation différente :

a) Le terme « la Convention » s'entend de la Convention relative à l'aviation civile internationale, ouverte à la signature à Chicago le 7 décembre 1944, ainsi que de toute annexe adoptée conformément à l'article 90 de ladite Convention et de tout amendement aux annexes ou à la Convention adopté conformément aux articles 90 et 94 de celle-ci, dans la mesure où ces annexes et amendements ont été effectifs pour les deux Parties contractantes;

b) L'expression « autorités aéronautiques » s'entend, dans le cas de la République de Corée, du Ministre des transports et, dans le cas du Brunéi Darussalam, du Ministre des communications, ou, dans les deux cas, de toute personne ou tout organisme habilités à exercer toutes fonctions relevant à ce jour desdites autorités aéronautiques;

c) L'expression « entreprise de transport aérien désignée » s'entend d'une entreprise de transport aérien qu'une Partie contractante a désignée, par notification écrite à l'autre Partie contractante, pour l'exploitation des services aériens sur les routes spécifiées dans l'annexe au présent Accord, et à laquelle l'autorisation d'exploitation appropriée a été accordée par l'autre Partie contractante, conformément aux dispositions de l'article 3 du présent Accord;

d) Le terme « territoire », en ce qui concerne un État, a le sens que lui donne l'article 2 de la Convention;

e) Les expressions « service aérien », « service aérien international », « entreprise de transport aérien » et « escale non commerciale » ont respectivement le sens que leur donne l'article 96 de la Convention;

f) Le terme « capacité » désigne, au sujet d'un aéronef, sa charge utile sur une route ou sur un segment de route;

g) Le terme « capacité » désigne, au sujet des services convenus, la capacité de l'aéronef utilisé pour ces services, multipliée par la fréquence des vols de cet aéronef pendant une période donnée sur une route ou sur un segment de route;

h) L'expression « transport de trafic » désigne le transport de passagers, de marchandises et de courrier; et

i) Le terme « Annexe » s'entend de l'Annexe au présent Accord, telle qu'elle peut être amendée conformément aux dispositions de l'article 16. L'Annexe fait partie intégrante du présent Accord et est également visée dans toute référence à l'Accord, sauf indication contraire.

Article 2. Octroi de droits

1. Chaque Partie contractante accorde à l'autre les droits prévus dans le présent Accord aux fins de permettre aux entreprises de transport aérien qu'elle a désignées d'établir et d'exploiter des services aériens internationaux réguliers sur les routes spécifiées dans l'Annexe. Ces services et ces routes sont dénommés ci-après « les services convenus » et « les routes spécifiées ».

2. Sous réserve des dispositions du présent Accord, les entreprises de transport aérien désignées par chaque Partie contractante auront, lorsqu'elles exploiteront un service convenu sur les routes spécifiées, les droits suivants :

a) Survoler le territoire de l'autre Partie contractante sans y faire escale;

b) Faire des escales non commerciales sur le territoire de l'autre Partie contractante; et

c) Embarquer et débarquer des passagers, des marchandises et du courrier à tout point des routes spécifiées, sous réserve des dispositions contenues dans l'Annexe.

3. Aucune disposition du paragraphe 2 ne peut être interprétée comme conférant aux entreprises de transport aérien désignées de l'une des Parties contractantes le droit d'embarquer, sur le territoire de l'autre Partie contractante, des passagers, des marchandises ou du courrier pour les transporter, contre rémunération ou en exécution d'un contrat de location, vers un autre point du territoire de cette autre Partie contractante.

Article 3. Désignation des entreprises de transport aérien

1. Chaque Partie contractante a le droit de désigner, par notification écrite à l'autre Partie contractante, une ou plusieurs entreprises de transport aérien pour exploiter les services convenus sur les routes spécifiées.

2. À la réception de la désignation, l'autre Partie contractante doit, sous réserve des dispositions des paragraphes 3 et 4 du présent article, accorder sans délai à l'entreprise de transport aérien désignée l'autorisation d'exploitation adéquate.

3. Les autorités aéronautiques d'une Partie contractante peuvent demander aux entreprises de transport aérien désignées par l'autre Partie contractante la preuve qu'elles sont à même de satisfaire aux conditions prescrites par leurs lois et règlements d'application courante et habituelle à l'exploitation des services aériens internationaux, et en conformité avec les dispositions de la Convention.

4. Chaque Partie contractante a le droit de refuser la désignation d'une ou de plusieurs entreprises de transport aérien, de refuser d'accorder l'autorisation d'exploitation visée au paragraphe 2, ou d'imposer les conditions qu'elle juge nécessaires à l'exercice des droits visés à l'article 2 par les entreprises de transport aérien désignées dans tous les cas où elle n'est pas convaincue qu'une part importante de la propriété et le contrôle effectif de ces entreprises de

transport aérien sont détenus par la Partie contractante qui les a désignées ou par des ressortissants de celle-ci.

5. Les entreprises de transport aérien désignées et autorisées conformément aux dispositions des paragraphes 1 et 2 peuvent commencer à exploiter les services convenus, à condition que la capacité soit réglementée en vertu de l'article 9 du présent Accord et que les tarifs établis conformément aux dispositions de l'article 10 du présent Accord soient en vigueur à l'égard de ces services.

Article 4. Révocation et suspension de droits

1. Chaque Partie contractante a le droit de révoquer une autorisation d'exploitation ou de suspendre l'exercice des droits visés à l'article 2 du présent Accord par les entreprises de transport aérien désignées par l'autre Partie contractante, ou encore de soumettre l'exercice de ces droits aux conditions qu'elle juge nécessaires :

a) si elle n'est pas convaincue qu'une part importante de la propriété et le contrôle effectif de ces entreprises de transport aérien sont détenus par la Partie contractante qui les a désignées ou par des ressortissants de celle-ci; ou

b) si les entreprises de transport aérien ne se conforment pas aux lois et règlements de la Partie contractante accordant lesdits droits; ou

c) si les entreprises de transport aérien ne se conforment pas aux dispositions du présent Accord.

2. Chaque Partie contractante ne fera usage de ce droit qu'après consultation avec l'autre Partie contractante, à moins que la révocation, la suspension ou l'imposition immédiates des conditions visées au paragraphe 1 ne soient nécessaires pour éviter que les lois et règlements ne soient enfreints.

Article 5. Droits de douane et autres redevances similaires

1. Les aéronefs exploités en service international par les entreprises de transport aérien désignées des Parties contractantes ainsi que leur équipement normal, les pièces de rechange, les réserves de carburants et de lubrifiants et les provisions (y compris la nourriture, les boissons et le tabac) se trouvant à leur bord sont exemptés de tous droits de douane, frais d'inspection et autres redevances similaires à l'entrée sur le territoire de l'autre Partie contractante, conformément aux dispositions des lois et règlements en vigueur de chaque Partie contractante, à condition que ces équipements et réserves demeurent à bord de l'aéronef jusqu'à leur réexportation.

2. Sont également exonérés de ces droits, frais et redevances, conformément aux dispositions des lois et règlements en vigueur de chaque Partie contractante, à l'exception des redevances à acquitter en cas de prestation de service :

a) Les provisions de bord embarquées sur le territoire de l'une des Parties contractantes, dans les limites définies par les autorités compétentes de ladite Partie contractante et destinées à être consommées à bord des aéronefs employés dans les services convenus de l'autre Partie contractante;

b) Les pièces de rechange introduites sur le territoire de l'une des Parties contractantes en vue de l'entretien ou de la réparation d'aéronefs utilisés dans les services convenus par les entreprises de transport aérien désignées de l'autre Partie contractante;

c) Les carburants et les lubrifiants destinés à l'approvisionnement des aéronefs exploités dans les services convenus par les entreprises de transport aérien désignées de l'autre Partie contractante, même s'ils sont destinés à être utilisés pendant la partie du voyage effectuée au-dessus du territoire de la Partie contractante où ils ont été embarqués.

Il peut être exigé que les articles visés aux alinéas a), b) et c) du présent paragraphe soient gardés sous la surveillance ou le contrôle des autorités douanières.

3. L'équipement normal des aéronefs de l'une des Parties contractantes et leurs articles et provisions de bord ne peuvent être débarqués sur le territoire de l'autre Partie qu'avec le consentement des autorités douanières de celle-ci. En pareil cas, ils peuvent être placés sous la surveillance desdites autorités jusqu'à ce qu'ils soient réexportés ou utilisés d'une autre façon conformément à la réglementation douanière.

Article 6. Application des lois et règlements

1. Les lois et règlements de l'une des Parties contractantes régissant l'entrée sur son territoire ou la sortie de celui-ci des aéronefs employés dans des services aériens internationaux, ou les vols de tels aéronefs sur ledit territoire, s'appliquent aux aéronefs des entreprises de transport aérien désignées de l'autre Partie contractante et sont observés par lesdits aéronefs à leur entrée sur le territoire de la première Partie contractante, pendant leur présence sur ce territoire et à leur sortie.

2. Les lois et règlements de l'une des Parties contractante régissant sur son territoire l'entrée, le séjour, le transit ou la sortie de passagers, de membres d'équipage, de marchandises et de courrier, tels que ceux relatifs aux formalités concernant l'entrée et la sortie, l'émigration et l'immigration, les douanes, les devises, les mesures sanitaires et de quarantaine, s'appliquent aux passagers, aux membres d'équipage, aux marchandises ou au courrier transportés par les aéronefs des entreprises de transport aérien désignées de l'autre Partie contractante pendant leur présence sur le territoire de la première Partie contractante.

Article 7. Établissement de bureaux de représentation des entreprises de transport aérien

Les entreprises de transport aérien de chacune des Parties contractantes ont le droit d'établir des bureaux de représentation sur le territoire de l'autre Partie contractante. Ces bureaux de représentation peuvent comprendre du personnel commercial et technique.

Les bureaux de représentation, les représentants et les membres du personnel sont assujettis aux lois et règlements en vigueur sur le territoire de cette autre Partie contractante.

Article 8. Reconnaissance des certificats et licences

1. Les certificats de navigabilité, les brevets d'aptitude et les licences délivrés ou validés par l'une des Parties contractantes et en cours de validité sont reconnus comme valables par l'autre Partie contractante.

2. Chaque Partie contractante se réserve toutefois le droit de ne pas reconnaître comme valables, pour des vols au-dessus de son territoire, les brevets d'aptitude et les licences délivrés à ses ressortissants ou reconnus valables pour ceux-ci par l'autre Partie contractante ou par tout autre État.

Article 9. Règlementation de la capacité

1. Les entreprises de transport aérien désignées des deux Parties contractantes jouissent de la faculté d'exploiter dans des conditions équitables et égales les services convenus sur les routes spécifiées.

2. En exploitant les services convenus, les entreprises de transport aérien désignées de chacune des Parties contractantes prennent en considération les intérêts des entreprises de transport aérien désignées de l'autre Partie contractante afin de ne pas porter indûment préjudice aux services que ces dernières assurent sur tout ou partie des mêmes routes.

3. Sur une route spécifiée, la capacité offerte par les entreprises de transport aérien désignées d'une Partie contractante et la capacité offerte par les entreprises de transport aérien désignées de l'autre Partie contractante sont maintenues dans un rapport raisonnable avec les besoins du public en matière de transport aérien sur cette route.

4. Les services convenus assurés par les entreprises de transport aérien désignées des deux Parties contractantes ont pour but principal d'assurer, suivant un coefficient de charge utile raisonnable, une capacité répondant aux besoins actuels et prévisibles de transport à destination et en provenance du territoire de la Partie contractante désignant les entreprises de transport aérien. Le transport de trafic embarqué ou débarqué sur le territoire de l'autre Partie contractante à destination et en provenance de points sur les routes spécifiées sur les territoires d'États autres que celui désignant les entreprises de transport aérien est à caractère complémentaire. Ces entreprises de transport aérien exercent leur droit de transporter du trafic entre des points des routes spécifiées sur le territoire de l'autre Partie contractante et des points sur le territoire de pays tiers dans l'intérêt d'un développement ordonné du transport aérien international de manière à ce que la capacité soit liée :

a) aux besoins de trafic à destination et en provenance du territoire de la Partie contractante qui a désigné l'entreprise de transport aérien;

b) aux besoins de trafic existant dans les régions desservies par les services convenus, compte tenu des services aériens locaux et régionaux; et

c) aux exigences d'exploitation de l'entreprise de transport aérien.

Article 10. Tarifs

1. Aux fins des paragraphes suivants, le terme « tarifs » s'entend des prix à payer pour le transport de passagers et de marchandises et des conditions dans lesquelles ces prix s'appliquent, y compris des prix et des conditions offertes aux agences et autres services auxiliaires, à l'exclusion de la rémunération et des conditions pour le transport du courrier.

2. Les tarifs applicables à tout service convenu seront fixés à des niveaux raisonnables qui tiennent compte de tous les facteurs pertinents, notamment les charges d'exploitation, un bénéfice raisonnable et les différentes caractéristiques des services, telles que la vitesse et le confort, ainsi que les tarifs des autres entreprises de transport aérien sur toute partie de la route spécifiée.

3. Les tarifs sont fixés conformément aux dispositions ci-après :

a) Les tarifs visés au paragraphe 2 ainsi que les taux de commission d'agence y relatifs sont, le cas échéant, convenus à l'égard de chacune des routes spécifiées et de chaque segment de ces routes entre les entreprises de transport aérien désignées concernées, et un tel accord est trouvé, dans la mesure du possible, au moyen du mécanisme de fixation des tarifs de l'Association du transport aérien international;

b) Les tarifs ainsi convenus sont soumis à l'approbation des autorités aéronautiques des deux Parties contractantes, au moins 60 jours avant la date proposée pour le début des services. Dans des cas particuliers, ce délai peut être réduit, sous réserve de l'accord desdites autorités;

c) L'approbation peut être donnée expressément. Si aucune des autorités aéronautiques n'a exprimé son désaccord dans les 30 jours à compter de la date de soumission, conformément à l'alinéa b), ces tarifs sont considérés comme approuvés. Si le délai de soumission est réduit, comme prévu à l'alinéa b), les autorités aéronautiques peuvent convenir que le délai dans lequel tout désaccord doit être notifié sera inférieur à 30 jours.

d) Si un tarif ne peut être convenu conformément aux dispositions de l'alinéa a) ou si au cours de la période applicable conformément à l'alinéa c), les autorités aéronautiques d'une Partie contractante notifient aux autorités aéronautiques de l'autre Partie contractante leur désaccord concernant un tarif fixé conformément à l'alinéa c), les autorités aéronautiques des deux Parties contractantes s'efforcent de déterminer le tarif par accord mutuel.

e) Si les autorités aéronautiques ne parviennent pas à s’entendre au sujet d’un tarif qui leur est soumis en vertu de l'alinéa b) ou au sujet de la détermination d’un tarif en vertu de l'alinéa d), le différend est réglé conformément aux dispositions de l’article 14 du présent Accord.

f) Tout tarif établi conformément aux dispositions du présent article demeure en vigueur jusqu'à l'introduction d'un nouveau tarif. Toutefois, un tarif ne sera pas prolongé en vertu du présent paragraphe de plus de 12 mois après la date à laquelle il aurait normalement expiré.

Article 11. Transfert de revenus

Chaque Partie contractante accorde aux entreprises de transport aérien désignées de l'autre Partie contractante le droit de transférer l'excédent des recettes sur les dépenses réalisées par les entreprises de transport aérien sur le territoire de la première Partie contractante dans le cadre du transport de passagers, de courrier et de marchandises, en toute devise librement convertible, conformément à la réglementation des changes en vigueur.

Article 12. Fourniture de statistiques

Les autorités aéronautiques de chacune des Parties contractantes fournissent aux autorités aéronautiques de l’autre Partie contractante, à leur demande, les statistiques périodiques ou autres déclarations de statistiques pouvant être raisonnablement requises aux fins de l'examen de la capacité offerte sur les services convenus par les entreprises de transport aérien désignées de la première Partie. Ces déclarations comprennent toutes les informations nécessaires pour déterminer le volume du trafic transporté par lesdites entreprises de transport aérien sur les services convenus et les points d'embarquement et de débarquement de ce trafic.

Article 13. Consultations

Les Parties contractantes ont l'intention de veiller à ce que leurs autorités aéronautiques respectives tiennent des consultations fréquentes en vue d'une collaboration étroite sur toutes les questions concernant l'exécution du présent Accord.

Article 14. Règlement des différends

1. En cas de différend relatif à l'interprétation ou à l'application du présent Accord entre les Parties contractantes, celles-ci s'efforcent d'abord de le régler par voie de négociation.

2. Si les Parties contractantes ne parviennent pas à un règlement par voie de négociation, elles peuvent convenir de soumettre le différend à la décision d'une personne ou entité. Si elles ne s'entendent pas à ce sujet, le différend peut être soumis, à la demande de l'une ou l'autre des Parties contractantes, à un tribunal de trois arbitres. Chaque Partie contractante désigne un arbitre et le troisième est nommé par les deux arbitres ainsi désignés. Chaque Partie contractante nomme son arbitre dans les 60 jours qui suivent la date à laquelle elle reçoit une notification de l'autre Partie contractante, par la voie diplomatique, demandant un arbitrage du différend, et le troisième arbitre est désigné dans un délai supplémentaire de 60 jours. Si l'une ou l'autre des Parties contractantes ne désigne pas son arbitre dans les délais spécifiés, ou si le troisième arbitre n'est pas désigné dans les délais spécifiés, le Président du Conseil de l'Organisation de l'aviation civile internationale peut, à la demande de l'une ou l'autre des Parties contractantes, désigner un ou des arbitres selon les besoins. Dans ce cas, le troisième arbitre sera un ressortissant d'un État tiers et présidera le tribunal arbitral.

3. Les Parties contractantes se conforment à toute décision rendue, y compris toute recommandation provisoire faite en application du paragraphe 2.

4. Les procédures d'arbitrage se tiennent en un lieu qui sera déterminé par les Parties contractantes. Les frais de chaque arbitre national sont à la charge de la Partie contractante concernée. Tous les autres frais du tribunal arbitral, y compris les honoraires et les frais du troisième arbitre, sont partagés à parts égales entre les Parties contractantes.

5. Si l'une des Parties contractantes ou une entreprise de transport aérien désignée d'une Partie contractante ne se conforme pas aux exigences du paragraphe 3, l'autre Partie contractante peut limiter ou révoquer tout droit qu'elle a accordé en vertu du présent Accord.

Article 15. Sûreté

1. Conformément à leurs droits et obligations en vertu du droit international, les Parties contractantes réaffirment que leur obligation réciproque de protéger la sûreté de l'aviation civile contre des actes d'intervention illicites fait partie intégrante du présent Accord. Sans préjudice de l'ensemble de leurs droits et obligations en vertu du droit international, elles agiront en particulier conformément aux dispositions de la Convention relative aux infractions et à certains autres actes survenant à bord des aéronefs, signée à Tokyo le 14 septembre 1963, de la Convention pour la répression de la capture illicite d'aéronefs, signée à la Haye le 16 décembre 1970, et de la Convention pour la répression d'actes illicites dirigés contre la sécurité de l'aviation civile, signée à Montréal le 23 septembre 1971, ou de toute autre convention relative à la sûreté de l'aviation à laquelle les deux Parties adhèrent.

2. Les Parties contractantes se prêtent mutuellement, sur demande, toute l'aide nécessaire pour prévenir la capture illicite d'aéronefs civils et tout autre acte illicite portant atteinte à la sécurité de tels aéronefs, de leurs passagers et équipages, des aéroports et des installations de navigation aérienne, ainsi que toute autre menace contre la sûreté de l'aviation civile.

3. Dans leurs relations mutuelles, les Parties contractantes se conforment aux dispositions applicables en matière de sûreté aérienne arrêtées par l'Organisation de l'aviation civile internationale et désignées en tant qu'annexes à la Convention, dans la mesure où de telles dispositions s'appliquent à leur égard. Elles exigeront que les exploitants d'aéronefs immatriculés sur leur territoire, les exploitants ayant le siège principal de leurs activités ou leur résidence permanente sur leur territoire, et les exploitants d'aéroports sur leur territoire respectent les dispositions relatives à la sûreté aérienne.

4. Chaque Partie contractante convient qu'elle peut exiger de ces exploitants d'aéronefs qu'ils respectent les dispositions en matière de sûreté aérienne visées au paragraphe 3, auxquelles l'autre Partie subordonne l'entrée ou le séjour sur son territoire ou la sortie de celui-ci. Chaque Partie contractante fait en sorte que des mesures appropriées soient effectivement prises sur son territoire pour la protection des aéronefs et pour l'inspection des passagers, des équipages, des bagages à main et de soute ainsi que des marchandises et des provisions de bord avant et pendant l'embarquement ou le chargement. Chaque Partie contractante examine avec bienveillance toute demande formulée par l'autre Partie contractante afin que des mesures spéciales de sûreté soient prises en cas de menace particulière.

5. En cas d'acte ou de menace de capture illicite d'aéronefs civils ou d'autres actes illicites contre la sécurité de tels aéronefs, de leurs passagers et équipages, d'aéroports ou d'installations de navigation aérienne, les Parties contractantes se prêtent mutuellement assistance en facilitant les communications et d'autres mesures appropriées en vue de mettre fin rapidement et sans risques à ces actes ou menaces.

Article 16. Amendements

1. Si l'une des Parties contractantes juge souhaitable de modifier certaines dispositions du présent Accord, elle peut à tout moment demander des consultations avec l'autre Partie contractante. Les consultations à cet effet peuvent avoir lieu verbalement ou par correspondance et commencent dans les 60 jours qui suivent la date de réception de la demande. Toutes les modifications ainsi convenues entrent en vigueur après avoir été confirmées au moyen d'un échange de notes diplomatiques.

2. L'Annexe peut être modifiée par accord direct entre les autorités aéronautiques des Parties contractantes, confirmé par un échange de notes diplomatiques.

3. Si les deux Parties contractantes adhèrent à une convention multilatérale générale ou à un accord sur les transports aériens, le présent Accord sera modifié de sorte à être conforme aux dispositions de ladite convention ou dudit accord.

Article 17. Dénonciation

Chacune des Parties contractantes pourra à tout moment notifier à l'autre Partie contractante sa décision de mettre fin au présent Accord. Cette notification devra être communiquée en même

temps à l'Organisation de l'aviation civile internationale. Dans ce cas, le présent Accord expire 12 mois après la date à laquelle l'autre Partie aura reçu la notification, à moins que celle-ci ne soit retirée d'un commun accord avant expiration de ce délai. Si la Partie contractante destinataire n'accuse pas réception de la notification, celle-ci sera réputée avoir été reçue 14 jours après sa réception par l'Organisation de l'aviation civile internationale.

Article 18. Enregistrement

Le présent Accord et tout amendement qui pourrait lui être apporté seront enregistrés auprès de l'Organisation de l'aviation civile internationale.

Article 19. Entrée en vigueur

Le présent Accord entrera en vigueur à la date à laquelle les deux Parties contractantes se seront notifié par la voie diplomatique que les procédures juridiques internes nécessaires à cet effet ont été accomplies.

EN FOI DE QUOI, les soussignés, dûment autorisés par leurs Gouvernements respectifs, ont signé le présent Accord.

FAIT à Séoul, le 5 août 1992, en deux exemplaires, en langue anglaise. Une traduction officielle de l'Accord dans les langues coréenne et malaise sera échangée par la voie diplomatique.

Pour le Gouvernement de la République de Corée :

LEE SANG-OCK

Pour le Gouvernement de Sa Majesté le Sultan
et Yang Di-Pertuan du Brunéi Darussalam :

DATO ZAKARIA

ANNEXE

Section A

Routes à desservir dans les deux sens par l'entreprise ou les entreprises de transport aérien désignées de la République de Corée :

Points de départ :	Points en République de Corée
Points intermédiaires :	Points à préciser plus tard
Points de destination :	Points au Brunéi Darussalam
Points au-delà :	Points à préciser plus tard

Section B

Routes à desservir dans les deux sens par l'entreprise ou les entreprises de transport aérien désignées du Brunéi Darussalam :

Points de départ :	Points au Brunéi Darussalam
Points intermédiaires :	Points à préciser plus tard
Points de destination :	Points en République de Corée
Points au-delà :	Points à préciser plus tard

Notes *:*

1. Les entreprises de transport aérien désignées des deux Parties contractantes peuvent omettre de faire escale dans l'un des points ci-dessus, à condition que les services convenus sur la route commencent aux points de départ dans les pays respectifs.

2. Les points intermédiaires, les points au-delà et l'exercice des droits de cinquième liberté (à destination et en provenance de points intermédiaires et à destination et en provenance de points au-delà) sont soumis à un accord entre les deux autorités aéronautiques.

No. 49671

Republic of Korea
and
Brazil

Treaty between the Republic of Korea and the Federative Republic of Brazil on mutual legal assistance in criminal matters. Brasilia, 13 December 2002

Entry into force: *8 February 2006 by the exchange of the instruments of ratification, in accordance with article 21*

Authentic texts: *English, Korean and Portuguese*

Registration with the Secretariat of the United Nations: *Republic of Korea, 6 July 2012*

République de Corée
et
Brésil

Traité d'entraide judiciaire en matière pénale entre la République de Corée et la République fédérative du Brésil. Brasilia, 13 décembre 2002

Entrée en vigueur : *8 février 2006 par l'échange des instruments de ratification, conformément à l'article 21*

Textes authentiques : *anglais, coréen et portugais*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 6 juillet 2012*

[ENGLISH TEXT – TEXTE ANGLAIS]

TREATY
BETWEEN THE REPUBLIC OF KOREA
AND
THE FEDERATIVE REPUBLIC OF BRAZIL
ON
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The Republic of Korea and the Federative Republic of Brazil (hereinafter referred to as "the Parties"),

Desiring to improve the effectiveness of both countries in the investigation, prosecution, and prevention of crime through cooperation and mutual legal assistance in criminal matters,

Have agreed as follows:

Article 1
Scope of Application

1. The Parties shall, in accordance with the provisions of this Treaty, grant each other the widest measure of assistance in investigations, prosecutions or proceedings in respect of criminal matters.

2. For the purpose of this Treaty, criminal matters mean investigations, prosecutions or proceedings relating to any offence the punishment of which at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the Requesting Party.

3. Assistance shall include:
   (a) taking evidence or statements from persons;
   (b) providing information, documents, records and articles of evidence;
   (c) locating or identifying persons or items;
   (d) serving documents;
   (e) executing requests for search and seizure;
   (f) transferring persons in custody for testimony or assistance in investigation;
   (g) measures of assistance in relation to proceeds of crime such as restraining, forfeiting and transferring; and
   (h) other forms of assistance not prohibited by the laws of the Requested Party.

4. This Treaty does not apply to:
   (a) the extradition of any person;
   (b) the execution in the Requested Party of criminal judgments imposed in the Requesting Party except to the extent permitted by the law of the Requested Party and this Treaty;
   (c) the transfer of prisoners to serve sentences; and
   (d) the transfer of proceedings in criminal matters.

Article 2

Compatibility with Other Treaties and International Instruments

Assistance and procedures set forth in this Treaty shall not prevent either Party from granting assistance to the other Party through the provisions of other applicable international agreements, or through the provisions of its national laws. The Parties may also provide assistance to each other pursuant to any bilateral arrangement, agreement, or practice that may be applicable.

Article 3

Central Authority

1. Each Party shall designate a Central Authority to make or receive requests for the purpose of this Treaty. The Central Authority for the Republic of Korea shall be the Minister of Justice or an official designated by that Minister. The Central Authority for the Federative Republic of Brazil shall be the Ministry of Justice.

2. The Central Authorities shall communicate through the diplomatic channel or directly with one another for the purpose of this Treaty.

Article 4

Refusal or Postponement of Assistance

1. Assistance may be refused if, in the opinion of the Requested Party:

(a) the request relates to a political offence or to an offence under military law which would not be an offence under ordinary criminal law;

(b) the execution of the request would impair its sovereignty, security, public order or other essential public interests;

(c) there are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting or punishing a person on account of that person's race, sex, religion, nationality or political opinions or that that person's position may be prejudiced for any of those reasons; or

(d) the conduct which is the subject of the investigation, prosecution or proceeding in the Requesting Party would not constitute an offence under the laws of the Requested Party.

2. Assistance may be postponed by the Requested Party if execution of the request would interfere with an ongoing investigation or proceeding in the Requested Party.

3. Before refusing a request or postponing its execution, the Requested Party shall consult with the Requesting Party whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with them.

4. If the Requested Party refuses or postpones assistance, it shall inform the Requesting Party of the reasons for the refusal or postponement.

Article 5
Form and Contents of Requests

1. Requests for assistance shall include:

(a) the name of the competent authority conducting the investigation or proceeding to which the request relates;

(b) the purpose of the request and the description of the assistance sought;

(c) the description of the subject matter and the nature of investigations or proceedings, including a summary of relevant facts and laws except in cases of request for service of documents; and

(d) any time limit within which compliance with the request is desired.

2. Requests for assistance, to the extent necessary and possible, shall also include:

(a) information on the identity, nationality and location of any person from whom evidence is sought;

(b) information on the identity and location of a person to be served, that person's relationship to the proceeding, and the manner in which service is to be made;

(c) information on the identity and location of a person and items to be found;

(d) a description of person or place to be searched and of the items to be seized;

(e) a description of the manner in which any testimony or statement is to be taken and recorded;

(f) a list of questions to be asked of a witness;

(g) a description of any particular procedure or requirement to be followed in executing the request;

(h) information as to the allowances and expenses to which a person asked to appear in the Requesting Party will be entitled;

(i) any need for confidentiality and the reasons therefor; and

(j) such other information as is necessary for the proper execution of the request.

3. If the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request additional information.

4. A request shall be made in writing except that the Requested Party may accept a request in another form in urgent situations. In any such situation, the request shall be confirmed in writing promptly thereafter unless the Requested Party agrees otherwise.

5. Requests, supporting documents and other communications made pursuant to this Treaty shall be accompanied by a translation into the language of the Requested Party or another language legally acceptable to that party.

Article 6

Execution of Requests

Requests for assistance shall be executed promptly in accordance with the law of the Requested Party and, insofar as it is not prohibited by that law, in the manner requested by the Requesting Party.

Article 7

Return of Articles and Documents

Where required by the Requested Party, the Requesting Party shall return as soon as possible any documents, records, or articles of evidence to the Requested Party provided under this Treaty.

Article 8

Protection of Confidentiality

The Requested Party, if so requested, shall use its best efforts to keep confidential a request, its contents, supporting documents and any action taken pursuant to the request. If the request cannot be executed without breaching the requested confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.

Article 9

Limitation on Use

1. The Requesting Party shall not use any information or evidence obtained under this Treaty in any investigation, prosecution or proceeding other than that described in the request without the prior consent of the Requested Party.

2. The Requesting Party, if so requested, shall keep confidential information and evidence provided by the Requested Party, except to the extent that the information and evidence is needed for the investigation and proceeding described in the request.

3. Information and evidence which has been made public in the Requesting Party in accordance with paragraphs 1 or 2 may thereafter be used for any purpose.

Article 10

Taking Testimony or Evidence in the Requested Party

1. The Requested Party shall, in conformity with its law and upon request, take testimony or otherwise obtain statements of persons or require them to produce items of evidence for transmission to the Requesting Party.

2. The Requested Party shall permit the presence of such persons as specified in the request during the execution of the request, and may allow such persons to question the person whose testimony or evidence is being taken. In the event that such direct questioning is not permitted, such persons shall be allowed to submit questions to be posed to the persons whose testimony or evidence is being taken.

3. A person who is requested to give evidence under this Article may decline to give evidence where the law of the Requested Party permits that person not to give evidence in similar circumstances in proceedings originating in the Requested Party.

4. Where a person who is requested to give evidence in the Requested Party under this Article claims that there is a right to decline to give evidence under the laws of the Requesting Party,

(a) the Requested Party shall either:

(i) request the Requesting Party to provide a certificate as to the existence of that right; or

(ii) request the person to give the proof of the right of refusal for it to be transmitted to the Requesting Party for its determination as to the existence of the right claimed by the person and issuance of a certificate; and

(b) the certificate from the Requesting Party shall provide sufficient evidence as to the existence of the right.

Article 11

Testimony or Assistance in Investigations in the Requesting Party

1. The Requesting Party may request the assistance of the Requested Party in inviting a person to appear as a witness or expert in proceedings or assist in investigations. The Requesting Party shall indicate the extent to which the expenses and allowances will be paid.

2. The Requested Party shall promptly inform the Requesting Party of the person's response.

Article 12

Transfer of Persons in Custody

1. A person in custody in the Requested Party shall, at the request of the Requesting Party, be temporarily transferred to the Requesting Party to assist investigations or proceedings provided that both the person and the Requested Party consent to that transfer.

2. Where the person transferred is required to be kept in custody under the laws of the Requested Party, the Requesting Party shall hold that person in custody and shall return the person in custody at the conclusion of the execution of the request which gave rise to his transfer.

3. Where the Requested Party advises the Requesting Party that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person referred to in Article 11.

4. For the purpose of this Article, the person transferred shall receive credit for service of the sentence imposed in the Requested Party for the time served in the custody of the Requesting Party.

Article 13

Safe Conduct

1. A person present in the Requesting Party pursuant to a request made under Article 11 or 12 shall not be prosecuted, detained or subjected to any other restriction of personal liberty in that Party for any acts or omissions which preceded that person's departure from the Requested Party, nor shall that person be obliged to give evidence in any proceeding or to assist any investigation other than the proceeding or investigation to which the request relates to.

2. Paragraph 1 of the present Article shall cease to apply if a person, being free to leave, has not left the Requesting Party within a period of fifteen (15) days after that person has been officially notified that that person's presence is no longer required or, having left, has voluntarily returned.

3. A person who does not consent to a request pursuant to Article 11 or 12 shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure, notwithstanding any contrary statement in the request or summons.

Article 14

Provision of Publicly Available and Official Documents

1. The Requested Party shall provide the Requesting Party with copies of publicly available documents, records, or information in the possession of government departments and agencies in the Requested Party.

2. The Requested Party may provide copies of any documents, records, or information which are in the possession of a government department or agency in that Party but which are not publicly available, to the same extent and under the same conditions as it would be available to its own law enforcement or judicial authorities. The Requested Party may in its discretion deny a request pursuant to this paragraph entirely or in part.

Article 15

Service of Documents

1. The Requested Party shall effect service of documents that are transmitted to it for this purpose by the Requesting Party.

2. A request for the service of documents requiring the appearance of a person shall be received by the Requested Party not less than forty-five (45) days before the date on which the appearance is required. In urgent cases, the Requested Party may waive this requirement.

3. The Requested Party shall forward to the Requesting Party a proof of service that shall include the description of the date, place and manner of service, and be affixed with the signature or seal of the authority which served the document. If service cannot be effected, the Requesting Party shall be so informed and advised of the reasons.

Article 16

Search and Seizure

1. The Requested Party shall, in so far as its law permits, carry out a request for search and seizure and delivery of any item including documents, records or other articles of evidence to the Requesting Party provided that the request includes the information justifying such action under the laws of the Requesting Party.

2. The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place of seizure, the circumstances of seizure, and the subsequent custody of the items seized and their condition.

3. The Requested Party may require that the Requesting Party agree to terms and conditions deemed necessary to protect third party interests in the items to be transferred.

Article 17

Proceeds of Crime

1. The Requested Party shall, upon request, endeavor to ascertain whether any proceeds of crimes are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds may be located in its jurisdiction.

2. Where, pursuant to paragraph 1, items suspected to be the proceeds of crimes are found, the Requested Party shall take such measures as are permitted by its law to restrain and forfeit such items, particularly with a view to their transfer to the Requesting Party.

3. In the application of this Article, the rights of a bona fide third party shall be respected under the law of the Requested Party.

4. The Requested Party in control of forfeited proceeds shall deal with those proceeds in accordance with its law. To the extent permitted by its laws, the Requested Party may transfer forfeited proceeds to the Requesting Party.

Article 18

Certification and Authentication

1. A request for assistance and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require any form of certification or authentication, subject to paragraph 2.

2. Exceptionally, the Requesting Party may request that documents, records, or other materials mentioned in the request for assistance be transmitted in a specific form of certification or authentication as requested in order to make them admissible according to its law, and the Requested Party shall comply with the request provided that it is not prohibited under its law.

Article 19

Expenses

1. The Requested Party shall meet the cost of executing the request for assistance, except that the Requesting Party shall bear:

(a) the expenses associated with conveying any person to or from the territory of the Requested Party at the request of the Requesting Party, and any allowances or expenses payable to that person while in the Requesting Party pursuant to a request under Article 11 or 12; and

(b) the expenses and fees of experts.

2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

Article 20

Consultation

The Parties shall consult promptly, at the request of either, concerning the interpretation, the application or implementation of this Treaty.

Article 21

Entry into Force and Termination

1. This Treaty shall be subject to ratification. This Treaty shall enter into force upon the exchange of the instruments of ratification.

2. This Treaty applies to any requests presented after its entry into force even if the relevant acts or omissions occurred prior to the entry into force of this Treaty.

3. The Parties may amend this Treaty by mutual agreement, and any such amendment shall enter into force upon a written exchange of notifications between the Parties, through the diplomatic channel, that all domestic requirements for its entry into force have been completed.

4. Either Party may terminate this Treaty by notice in writing, through the diplomatic channel, at any time. Termination shall take effect six months after the date on which notice is given.

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

DONE in duplicate at Brasilia on this thirteenth day of December two thousand and two, in the Korean, Portuguese and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF KOREA

FOR THE FEDERATIVE REPUBLIC OF BRAZIL

[KOREAN TEXT – TEXTE CORÉEN]

대한민국과 브라질연방공화국간의
형사사법공조조약

대한민국과 브라질연방공화국(이하 "당사국"이라 한다)은,

형사사건에 있어서의 협력 및 사법공조를 통하여 양국이 범죄의 수사·기소 및 예방에 있어서의 실효성을 제고하기를 희망하여,

다음과 같이 합의하였다.

제 1 조
적용범위

1. 당사국은 이 조약의 규정에 따라 형사사건에 대한 수사·기소 또는 재판절차에서 상호 최대한 광범위한 조치의 공조를 제공한다.

2. 이 조약의 목적상, 형사사건이라 함은 공조요청시에 그 처벌이 요청국 사법당국의 관할하에 있는 범죄에 관한 수사·기소 또는 재판절차를 말한다.

3. 공조는 다음 사항을 포함한다.
   가. 관계인으로부터 증거·진술의 취득
   나. 정보·서류·기록 및 증거물의 제공
   다. 사람이나 물건의 소재 또는 동일성의 확인
   라. 서류의 송달
   마. 수색·압수 요청의 집행
   바. 증언이나 수사협조를 위한 피구금자의 이송
   사. 범죄취득물의 처분제한·몰수 및 이송 등 범죄취득물과 관련된 공조조치
   아. 피요청국의 법에 의하여 금지되지 아니한 다른 형태의 공조

4. 이 조약은 다음 사항에는 적용되지 아니한다.
   가. 범죄인의 인도

나. 피요청국의 법과 이 조약에 의하여 허용되는 범위외에 요청국에서 부과된 형사판결의 피요청국에서의 집행

다. 형의 복역을 위한 수형자의 이송

라. 형사사건에 관한 재판절차의 이관

제 2 조
다른 조약 및 국제약정과의 양립

이 조약에 규정된 공조와 그 절차는 어느 일방당사국이 적용가능한 국제협정이나 국내법 규정에 따라 타방당사국에게 공조를 제공하는 것을 방해하지 아니한다. 당사국은 양자간 약정·협정이나 적용가능한 관행에 따라 상호 공조를 제공할 수 있다.

제 3 조
중앙행정기관

1. 이 조약의 목적상, 각 당사국은 공조요청을 발송·접수하는 중앙행정기관을 지정한다. 대한민국의 중앙행정기관은 법무부장관이나 법무부장관이 지정하는 공무원이며, 브라질연방공화국의 중앙행정기관은 법무부이다.

2. 이 조약의 목적상, 중앙행정기관은 외교경로를 통하거나 상호간에 직접 접촉한다.

제 4 조
공조의 거절 또는 연기

1. 피요청국은 다음 각목의 경우에 대하여는 공조를 거절할 수 있다.

가. 공조요청이 정치적 범죄 또는 일반 형법상으로는 범죄가 되지 아니하는 군법상의 범죄에 관한 것인 경우

나. 공조이행이 피요청국의 주권·안전보장·공공질서 그 밖의 본질적인 공공이익을 침해할 우려가 있는 경우

다. 공조요청이 인종·성별·종교·국적 또는 정치적 견해를 이유로 어떤 자를 기소·처벌하기 위하여 이루어지거나 그 자의 지위가 위의 사유 등으로 인하여 불이익을 받을 것이라고 믿을 만한 충분한 근거가 있는 경우

라. 요청국에서 수사·기소 또는 재판절차의 대상이 되는 행위가 피요청국의 법상 범죄를 구성하지 아니하는 경우

2. 공조이행이 피요청국에서 진행중인 수사 또는 재판절차를 방해할 우려가 있는 경우, 공조는 피요청국에 의하여 연기될 수 있다.

3. 피요청국은 공조요청을 거절하거나 공조이행을 연기하기 이전에 피요청국이 필요하다고 판단하는 조건하에서 공조가 제공될 수 있는지 여부를 요청국과 협의한다. 요청국은 이러한 조건에 따른 공조를 수락하는 경우 그 조건을 준수한다.

4. 피요청국은 공조를 거절하거나 연기하는 경우, 요청국에 대하여 그 거절 또는 연기의 사유를 통보한다.

제 5 조
공조요청서의 내용

1. 공조요청서에는 다음 사항이 포함된다.

가. 공조요청과 관련된 수사 또는 재판절차를 행하고 있는 권한있는 기관의 명칭

나. 공조요청의 목적 및 요청되는 공조에 대한 설명

다. 서류송달을 위한 요청의 경우를 제외하고는 관련된 사실 및 법에 관한 요약을 포함하는 수사 또는 재판절차의 내용·성격에 대한 설명

라. 공조요청이 준수되기를 희망하는 기한

2. 공조요청서에는, 필요하고 가능한 범위안에서, 다음 사항이 포함된다.

가. 증거취득 대상자의 신원·국적 및 소재에 대한 정보

나. 송달대상자의 신원·소재, 그 대상자와 재판절차와의 관계 및 송달이 이루어지는 방식에 대한 정보

다. 소재파악 대상자 및 물건의 신원·행방에 대한 정보

라. 수색대상자·수색대상장소 및 압수될 물건에 대한 설명

마. 증언·진술의 취득 및 기록방법에 대한 설명

바. 증인에 대한 질문사항

사. 공조를 이행함에 있어 따라야 할 특별한 절차·요건에 대한 설명

아. 요청국에 출석하도록 요구된 사람이 받을 수 있는 수당·비용에 관한 정보

자. 비밀로 취급되어야 할 필요성 및 그 이유

차. 공조요청의 적절한 이행에 필요한 그 밖의 정보

3. 피요청국은 공조요청서에 포함된 정보가 그 요청을 처리하기에 충분하지 아니하다고 판단하는 경우 추가정보를 요청할 수 있다.

4. 공조요청은 서면으로 하되, 긴급한 상황에서 피요청국이 다른 형태의 공조요청을 수락하는 경우에는 그러하지 아니하다. 그러한 상황에 있어서 공조요청은 피요청국이 달리 동의하지 아니하는 한 추후에 신속히 서면으로 확인되어야 한다.

5. 이 조약에 따른 공조요청서·보충서류 및 그 밖의 전달문에는 피요청국의 언어나 피요청국이 법적으로 수락할 수 있는 언어로 된 번역문이 첨부되어야 한다.

제 6 조
공조요청의 이행

공조요청은 피요청국의 법에 따라 이루어지고, 피요청국의 법에 의하여 금지되지 아니하는 한 요청국이 요청한 방식으로 신속하게 이행된다.

제 7 조
서류 및 물건의 반환

피요청국의 요구가 있는 경우, 요청국은 이 조약에 의하여 제공된 서류·기록 또는 증거물을 가능한 한 신속히 피요청국에 반환한다.

제 8 조
비밀유지

피요청국은 요청이 있는 경우 공조요청서, 그 내용, 보충서류 및 요청에 따라 취한 모든 조치를 비밀로 유지하기 위하여 최대한 노력한다. 비밀유지요청을 위반하지 아니하고는 공조요청이 이행될 수 없는 경우, 피요청국은 요청국에 이를 통보하며, 이에 대하여 요청국은 공조요청이 이행되어야 할 것인지의 여부를 결정한다.

제 9 조
사용제한

1. 요청국은 이 조약에 의하여 취득한 정보나 증거를 피요청국의 사전동의 없이 공조요청서에 기재된 것외에 어떠한 수사·기소 또는 재판절차에서도 사용하지 아니한다.

2. 요청국은, 요청이 있는 경우, 공조요청서에 기재된 수사 또는 재판절차를 위하여 필요한 한도외에는 피요청국에 의하여 제공된 정보 및 증거를 비밀로 유지한다.

3. 제1항 또는 제2항에 따라 요청국에서 공개된 정보·증거는 그 후 어떠한 목적으로도 사용될 수 있다.

제 10 조
피요청국에서의 증언 또는 증거의 취득

1. 피요청국은 요청이 있는 경우, 자국법에 따라 요청국으로의 송부를 위하여 사람들로부터 증언이나 진술을 취득하거나 그들로 하여금 증거물을 제출하도록 요구한다.

2. 피요청국은 공조를 이행하는 동안 요청서에 명시된 자들의 출석을 허용하며 이들로 하여금 증언이나 증거취득 대상자를 신문할 수 있도록 허용할 수 있다. 직접신문이 허용되지 아니하는 경우, 이들은 증언이나 증거취득 대상자들에게 제기할 신문사항을 제출하는 것이 허용된다.

3. 이 조에 따라 증거를 제출하도록 요구받은 자는, 피요청국에서 개시되는 재판절차에 있어서 피요청국의 법이 이와 유사한 상황에서 그 자로 하여금 증거를 제출하지 아니할 수 있도록 허용하는 경우에는 증거제출을 거부할 수 있다.

4. 피요청국은 이 조에 따라 피요청국에서 증거를 제출하도록 요구받은 자가 요청국의 법상 증거제출을 거부할 권리가 있다고 주장하는 경우에는,

가. (1) 요청국에 대하여 그 권리의 존재에 대한 확인서를 제공하도록 요청하거나,

(2) 그 자가 주장하는 권리의 존재 및 그 확인서의 발급에 대하여 요청국이 결정할 수 있도록 전달하기 위하여 그 자에 대하여 거부할 권리의 증거를 제출하도록 요청한다.

나. 요청국으로부터의 확인서는 권리의 존재에 대한 충분한 증거가 된다.

제 11 조
요청국에서의 증언 또는 수사협조

1. 요청국은 재판절차에 증인 또는 감정인으로 출석하거나 수사에 협조할 자를 초정하기 위하여 피요청국의 협조를 요청할 수 있다. 요청국은 비용·수당이 지불되는 범위를 제시한다.

2. 피요청국은 그 자의 답변을 신속히 요청국에 통보한다.

제 12 조
피구금자의 이송

1. 피요청국에 구금되어 있는 자는 요청국의 요청이 있는 경우 수사 또는 재판절차에 협조하기 위하여 일시적으로 요청국에 이송된다. 다만, 그 이송은 피구금자와 피요청국이 동의하는 경우에 한한다.

2. 피요청국의 법상 피이송자가 계속 구금되어야 하는 경우에는, 요청국은 그 자를 계속 구금하고 그 자의 이송을 야기한 공조요청의 이행이 종료될 때 구금상태로 송환한다.

3. 피요청국이 피이송자를 더 이상 구금상태에 둘 필요가 없다고 요청국에 통보하는 경우, 그 자는 석방되며 제11조에 규정된 자와 동일한 대우를 받는다.

4. 이 조의 목적상, 피이송자가 요청국에서 구금되어 있던 기간은 피요청국에서 부과된 형의 복역기간에 산입된다.

제 13 조
신변안전

1. 제11조 또는 제12조에 따른 공조요청에 따라 요청국에 출석한 자는 그가

피요청국을 떠나기 이전에 발생한 작위 또는 부작위를 이유로 기소·구금되거나 개인의 자유에 대한 어떠한 다른 제한도 받지 아니하며, 공조요청과 관련된 재판절차 또는 수사외의 어떠한 재판절차에 증거를 제출하거나 어떠한 수사에 협조할 의무가 없다.

2. 제1항은 자유롭게 출국할 수 있게 된 자가 더 이상의 출석이 필요하지 아니하다고 공식적으로 통고받은 후 15일 이내에 요청국을 떠나지 아니하였거나 출국후 자발적으로 돌아온 경우에는 적용되지 아니한다.

3. 제11조 또는 제12조에 따른 공조요청에 동의하지 아니하는 사람은 공조요청서 또는 소환장에 어떠한 불이익이 규정되어 있다고 하더라도, 그러한 사유로 어떠한 형벌을 받거나 강제적인 조치에 처하여지지 아니한다.

제 14 조
공개서류 및 공적서류의 제공

1. 피요청국은 피요청국의 정부부처 및 정부기관이 보유하는 일반에게 개방된 문서·기록 또는 정보의 사본을 요청국에게 제공한다.

2. 피요청국은 자국의 법집행기관이나 사법기관이 이용하는 것과 동일한 범위·조건안에서, 자국의 정부부처 또는 정부기관이 보유하고 있거나 일반에 공개되지 아니한 서류·기록이나 정보의 사본을 요청국에 제공할 수 있다. 피요청국은 재량에 따라 이 항에 따른 요청의 전부 또는 일부를 거절할 수 있다.

제 15 조
서류의 송달

1. 피요청국은 요청국으로부터 송부받은 서류를 송달한다.

2. 어떤 자의 출석을 요구하는 서류의 송달을 위한 공조요청은 출석이 요구되는 최소한 45일 이전에 피요청국에 접수되어야 한다. 긴급한 경우 피요청국은 이 요건을 요구하지 아니할 수 있다.

3. 피요청국은 송달의 일자·장소 및 방식이 기재되고 서류송달기관의 서명이나 날인이 첨부된 송달증명서를 요청국에 송부한다. 송달이 이루어질 수 없는 경우, 요청국은 그 사실과 이유를 통보받는다.

제 16 조
수색 및 압수

1. 피요청국은 자국법이 허용하는 한도안에서 서류·기록 그 밖의 증거물을 포함하는 물건의 수색·압수와 요청국으로의 송부에 관한 공조요청을 이행한다. 다만, 그 공조요청서가 요청국의 법상 그러한 조치를 정당화하는 정보를 포함하는 경우에 한한다.

2. 피요청국은 수색결과, 압수장소, 압수상황과 압수물건의 사후 보관·상황과 관련하여 요청국이 요구할 수 있는 정보를 제공한다.

3. 피요청국은 송부되는 물건에 대한 제3자의 이익을 보호하기 위하여 필요하다고 판단되는 조건에 요청국의 동의를 요구할 수 있다.

제 17 조
범죄취득물

1. 피요청국은 요청을 받는 경우 어떠한 범죄취득물이 그 관할안에 존재하는지를 확인하기 위하여 노력하고 요청국에 그 조사결과를 통보한다. 요청국은 그 요청을 하는 경우, 그 범죄취득물이 피요청국의 관할안에 있을 것이라고 판단하는 근거를 피요청국에 통보한다.

2. 제1항에 따라 범죄취득물로 의심되는 물건이 발견되는 경우 피요청국은, 특히 요청국으로의 이송을 고려하여, 그 물건의 처분을 제한하고 몰수하기 위하여 자국법상 허용되는 조치를 취한다.

3. 이 조를 적용함에 있어서, 선량한 제3자의 권리는 피요청국의 법에 따라 존중된다.

4. 몰수된 범죄취득물을 관리하는 피요청국은 자국법에 따라 그 취득물을 처분한다. 피요청국은 자국법이 허용하는 한도안에서 몰수된 범죄취득물을 요청국에게 이송할 수 있다.

제 18 조
확인 및 인증

1. 제2항의 경우를 제외하고는, 공조요청서, 그 보충서류와 그 요청에 응하여 제공되는 서류 및 그 밖의 자료는 어떠한 형태의 확인이나 인증도 요구되지 아니한다.

2. 예외적으로, 요청국은 공조요청서에 규정된 서류·기록이나 그 밖의 자료가 요청국의 법에 따라 인정될 수 있도록 특정의 확인 또는 인증의 형식으로 송부되도록 요청할 수 있으며, 피요청국은 자국의 법이 금지하지 아니하는 한 그 요청을 준수한다.

제 19 조
비 용

1. 피요청국은 요청국이 부담하는 다음 사항을 제외한 공조이행비용을 부담한다.

가. 요청국의 요청에 따라 어떤 사람을 피요청국의 영역안으로 호송하거나 그 영역으로부터 호송하여 가는데 관련된 비용과 제11조 또는 제12조에 의한 요청에 따라 그 사람이 요청국에 체재한 기간 동안 그 사람에게 지급할 수당·비용

나. 감정인의 비용·보수

2. 공조요청의 이행이 예외적 성격의 비용을 필요로 하는 것이 명백하여진 경우, 당사국은 요청된 공조가 제공될 수 있는 조건을 결정하기 위하여 협의한다.

제 20 조
협 의

당사국은 어느 일방의 요청이 있는 경우 이 조약의 해석·적용이나 이행에 관하여 신속히 협의한다.

제 21 조
발효 및 종료

1. 이 조약은 비준을 받아야 하며, 비준서의 교환시에 발효한다.

2. 이 조약은 관련된 작위 또는 부작위가 이 조약의 발효이전에 발생하였다고 하더라도 이 조약의 발효 이후에 제출되는 모든 공조요청에 적용된다.

3. 당사국은 상호 합의에 의하여 이 조약을 개정할 수 있으며, 그 개정은 개정의 발효를 위한 국내요건이 완료되었음을 외교경로를 통하여 상호 서면통보할 때 발효한다.

4. 어느 당사국이든지 언제나 외교경로를 통한 서면통보에 의하여 이 조약을 종료시킬 수 있다. 종료는 그 통보일부터 6월후에 이루어진다.

이상의 증거로, 아래 서명자는 그들 각자의 정부로부터 정당하게 권한을 위임받아 이 조약에 서명하였다.

브라질리아에서 2002년 12월 13일 동등하게 정본인 한국어·포르투갈어 및 영어로 각 2부를 작성하였다. 해석상의 차이가 있을 경우에는 영어본이 우선한다.

대한민국을 대표하여

브라질연방공화국을 대표하여

[PORTUGUESE TEXT – TEXTE PORTUGAIS]

ACORDO

ENTRE A REPÚBLICA DA CORÉIA

E

A REPÚBLICA FEDERATIVA DO BRASIL

SOBRE ASSISTÊNCIA JUDICIÁRIA MÚTUA

EM MATÉRIA PENAL

A República da Coréia

e

A República Federativa do Brasil
(doravante denominadas "Partes"),

Desejosos de melhorar a eficácia da lei de ambos os países, na investigação, ação penal e prevenção do crime por meio de cooperação e assistência judiciária mútua em matéria penal,

Acordam o seguinte:

ARTIGO 1
Alcance da Assistência

1. As Partes se obrigam a prestar assistência mútua nos termos do presente Acordo, da forma mais ampla possível, em matéria de investigação, ação penal ou processos relacionados a delitos de natureza criminal.

2. Para efeito do presente Acordo, matéria criminal significa investigação, ação penal ou processos relativos a qualquer crime punível no momento da solicitação de assistência, sob a competência de autoridade judicial da Parte Requerente.

3. A assistência incluirá:

a) tomada de depoimentos ou declarações de pessoas;

b) fornecimento de informações, documentos, registros e elementos de prova;

c) localização ou identificação de pessoas (físicas e jurídicas) ou bens;

d) entrega de documentos;

e) execução de pedidos de busca e apreensão;

f) transferência de pessoas sob custódia para prestar depoimento ou ajudar nas investigações;

g) medidas de assistência em relação a produtos de crimes, tais como bloqueio, confisco e transferência; e

h) qualquer outra forma de assistência não proibida pelas leis da Parte Requerida.

4. O presente Acordo não se aplica a:

a) extradição de qualquer pessoa;

b) execução, na Parte Requerida, de um julgamento criminal realizado na Parte Requerente, exceto na medida em que seja permitido pelas leis da Parte Requerida e neste Acordo;

c) transferência de pessoas condenadas para cumprimento de sentença; e

d) transferência de procedimentos em matéria criminal.

ARTIGO 2
Compatibilidade com outros Acordos ou Instrumentos Internacionais

Os termos de assistência e demais procedimentos contidos neste Acordo não constituirão impedimento a que uma Parte preste assistência à outra com base em dispositivos de outros acordos internacionais aplicáveis, ou em conformidade com suas leis nacionais. As Partes podem, igualmente, prestar-se assistência nos termos de qualquer acordo, ajuste ou outra prática bilateral cabível.

ARTIGO 3
Autoridade Central

1. Cada Parte designará uma Autoridade Central para formular e receber solicitações relativas ao presente Acordo. A Autoridade Central para a República da Coréia será o Ministro da Justiça ou uma autoridade por ele designada. A Autoridade Central para a República Federativa do Brasil será o Ministério da Justiça.

2. As Autoridades Centrais se comunicarão por via diplomática ou diretamente entre si para as finalidades estipuladas neste Acordo.

ARTIGO 4
Recusa ou Adiamento da Assistência

1. A assistência poderá ser denegada se, no entendimento da Parte Requerida:

a) a solicitação referir-se a delito político ou crime previsto na legislação militar sem, contudo, constituir crime comum;

b) o atendimento à solicitação prejudicar a soberania, a segurança, a ordem pública ou outro interesse público essencial da Parte Requerida;

c) existirem substanciais motivos para crer que o pedido de assistência foi formulado para perseguir ou punir uma pessoa em razão de sua raça, sexo, religião, nacionalidade ou opinião política ou quando a posição dessa pessoa pode ser prejudicada por qualquer uma dessas razões; ou

d) a conduta objeto da investigação, ação ou processo penal na Parte Requerente não constituir um delito nos termos da lei da Parte Requerida.

2. A assistência poderá ser adiada pela Parte Requerida se a execução do pedido (puder) interferir em uma investigação ou procedimento em curso na Parte Requerida.

3. Antes de negar a assistência ou adiar a execução, a Parte Requerida deverá consultar a Parte Requerente para avaliar se a assistência pode ser prestada sob as condições consideradas necessárias. Caso a Parte Requerente aceite essa assistência condicionada, tais condições deverão ser respeitadas.

4. Se a Parte Requerida denegar ou adiar a assistência, deverá informar à Parte Requerente as razões da recusa ou adiamento.

ARTIGO 5
Forma e Conteúdo das Solicitações

1. A solicitação de assistência deverá conter:

a) o nome da autoridade competente que conduz a investigação, a ação penal ou o procedimento relacionado à solicitação;

b) a razão do pedido e a descrição da assistência solicitada;

c) a descrição da matéria e da natureza da investigação ou processo penal, incluindo um resumo de fatos relevantes e legislação, exceto nos casos em que o pedido for de apresentação de documentos;

d) a indicação de eventual prazo desejado para o cumprimento da solicitação.

2. Quando necessário e possível, a solicitação também deverá conter:

a) informação sobre a identidade, nacionalidade e localização de qualquer pessoa (física ou jurídica) de quem se busca uma prova;

b) informação sobre a identidade e a localização de uma pessoa (física ou jurídica) a ser intimada, o seu envolvimento com o processo e o procedimento de intimação cabível;

c) informação sobre a identidade e a localização de uma pessoa (física ou jurídica) ou de um objeto a ser encontrado;

d) descrição do local ou pessoa (física ou jurídica) a ser revistada e dos bens a serem apreendidos;

e) descrição da forma na qual qualquer depoimento ou declaração deva ser tomado e registrado;

f) lista das perguntas a serem feitas às pessoas mencionadas na solicitação;

g) descrição de qualquer procedimento especial ou exigência a ser seguido no cumprimento da solicitação;

h) informações quanto à ajuda de custo e ao ressarcimento de despesas a que a pessoa tem direito quando convidada a comparecer perante a Parte Requerente;

i) eventual necessidade de confidencialidade e as razões da mesma; e

j) tanto quanto necessário, qualquer outra informação inerente à execução do pedido.

3. Se a Parte Requerida considerar que as informações contidas no pedido não são suficientes ao seu atendimento, poderá requerer informações adicionais.

4. A solicitação de assistência deverá ser formulada, por escrito, exceto se a Parte Requerida aceitá-la de outro modo em situações de urgência. Em qualquer situação, o pedido deverá ser confirmado imediatamente por escrito, a menos que a Parte Requerida o aceite de outra forma.

5. Requerimentos, documentos anexos e outras comunicações formuladas com base no presente Acordo deverão estar acompanhadas de tradução para o idioma da Parte Requerida ou outro idioma legalmente aceitável por esta Parte.

ARTIGO 6
Cumprimento das Solicitações

As solicitações de assistência serão prontamente executadas de acordo com a lei da Parte Requerida e, desde que não seja proibida pela lei desta Parte, na forma solicitada pela Parte Requerente.

ARTIGO 7
Devolução de Objetos e Documentos à Parte Requerida

Quando solicitado pela Parte Requerida, a Parte Requerente deverá restituir, tão breve quanto possível, quaisquer documentos, registros ou instrumentos de provas obtidos nos termos deste Acordo.

ARTIGO 8
Proteção de Confidencialidade

A Parte Requerida, se solicitada, empenhar-se-á ao máximo no sentido de manter o caráter confidencial da solicitação, seu conteúdo, documentos anexos e qualquer medida adotada no pedido. Se a solicitação não puder ser atendida sem a quebra dessa confidencialidade, a Parte Requerida informá-lo-á à Parte Requerente, que, então, decidirá se ainda assim deve ou não ser executada a solicitação.

ARTIGO 9
Restrições ao Uso

1. A Parte Requerente não deverá usar qualquer informação ou prova obtida por força deste Acordo em investigação, ação penal ou procedimentos outros que não aqueles descritos na solicitação, sem o prévio consentimento da Parte Requerida.

2. A Parte Requerente, se solicitada, deverá manter sob sigilo as informações e provas obtidas da Parte Requerida, exceto no que se refere às informações e provas necessárias à investigação e procedimentos descritos no pedido.

3. Informações ou provas que tenham sido tornadas públicas na Parte Requerente, nos termos no parágrafo 1 ou 2, podem, dai por diante, ser usadas para qualquer fim.

ARTIGO 10
Depoimento ou Produção de Prova na Parte Requerida

1. A Parte Requerida deverá, em conformidade com sua lei e na ocasião do pedido, tomar testemunho ou de outra forma obter declarações de pessoas ou requererem que as mesmas apresentem instrumentos de prova para envio à Parte Requerente.

2. A Parte Requerida permitirá a presença de pessoas indicadas na solicitação, no decorrer do seu atendimento, e permitirá que apresentem perguntas a serem dirigidas à pessoa que dará testemunho ou apresentará prova. Caso esse questionamento direto não seja permitido, tais pessoas poderão submeter questões a serem dirigidas àquelas que estejam depondo ou produzindo provas.

3. Uma pessoa que é solicitada a apresentar prova nos termos deste artigo poderá recusar-se a fazê-lo quando a lei da Parte Requerida não impuser tal obrigação em circunstâncias similares em procedimentos originados na Parte Requerida.

4. Quando uma pessoa que é solicitada a apresentar prova na Parte Requerida nos termos deste artigo alegar o direito de recusar-se a fornecê-las, sob o amparo da lei da Parte Requerente,

a) a Parte Requerida deverá, alternativamente:

i) solicitar à Parte Requerente que forneça um certificado da existência desse direito; ou

ii) solicitar à pessoa que forneça prova do direito de recusa para que seja transmitida à Parte Requerente, a fim de determinar a existência do direito alegado e emitir um certificado.

b) o certificado da Parte Requerente constituirá prova suficiente da existência do direito.

ARTIGO 11
Depoimento ou Assistência nas Investigações na Parte Requerente

1. A Parte Requerente poderá solicitar assistência da Parte Requerida para convidar uma pessoa a comparecer como testemunha ou perito em processos ou auxiliar nas investigações. A Parte Requerente indicará o montante das despesas e ajuda de custos que devem ser pagas.

2. A Parte Requerida informará imediatamente a Parte Requerente da resposta da pessoa.

ARTIGO 12
Transferência de Pessoas sob Custódia

1. Uma pessoa sob custódia na Parte Requerida será, a pedido da Parte Requerente, temporariamente trasladada para esta Parte para auxiliar nas investigações ou processo, sob a condição de que tanto a pessoa quanto a Parte Requerida consintam com a transferência.

2. Quando for exigido que a pessoa trasladada seja mantida sob custódia sob as leis da Parte Requerida, a Parte Requerente manterá a pessoa sob custódia e a devolverá quando da conclusão da solicitação que deu ensejo ao traslado da mesma.

3. Se a Parte Requerida informar à Parte Requerente que não é mais necessário manter a pessoa transferida sob custódia, esta será colocada em liberdade e será tratada como previsto no Artigo 11.

4. O tempo em que a pessoa for mantida sob custódia na Parte Requerente será computado no cumprimento da sentença a ela imposta na Parte Requerida.

ARTIGO 13
Salvo Conduto

1. A pessoa presente na Parte Requerente, conforme solicitação feita nos termos dos Artigos 11 ou 12, não será detida, denunciada, processada ou sujeita a qualquer outra restrição de sua liberdade pessoal nessa Parte em razão de quaisquer atos ou omissões anteriores à sua partida da Parte Requerida e não será obrigada a dar provas em qualquer processo ou auxiliar qualquer investigação distintas daquelas que foram objeto do pedido.

2. O parágrafo 1 do presente Artigo não se aplicará caso a pessoa, sendo livre para deixar o território da Parte Requerente, não o tenha feito dentro de um prazo de 15 dias, após notificação oficial no sentido de que a presença da referida pessoa não é mais necessária ou, caso tenha partido, retorne voluntariamente.

3. A pessoa que não consinta em atender a uma solicitação formulada nos termos dos Artigos 11 ou 12 não estará, por esse motivo, sujeita a qualquer penalidade ou medida coercitiva, mesmo diante de qualquer declaração em contrário constante da solicitação ou intimação.

ARTIGO 14
Fornecimento de Documentos Oficiais Disponíveis ao Público

1. A Parte Requerida fornecerá à Parte Requerente cópias de documentos, registros ou informações de acesso geral, disponíveis nos órgãos oficiais da Parte Requerida.

2. A Parte Requerida poderá fornecer cópias de documentos, registros ou informações oficiais da mesma maneira e sob as mesmas condições do fornecimento às suas próprias autoridades policiais ou judiciais. A Parte Requerida poderá, a seu critério, negar, no todo ou em parte, uma solicitação referente a documentos não disponíveis ao público em geral.

ARTIGO 15
Entrega de Documentos

1. A Parte Requerida efetuará a entrega de documentos que lhe são transmitidos com essa finalidade pela Parte Requerente.

2. Um pedido de entrega de documentos que requeira o comparecimento de uma pessoa deve ser recebido pela Parte Requerida com antecedência mínima de 45 dias antes da data da exigência do comparecimento. Em caso de urgência, a Parte Requerida poderá dispensar essa exigência.

3. A Parte Requerida encaminhará à Parte Requerente o comprovante da entrega do documento, que deverá incluir data, local e forma de entrega, acompanhado de assinatura ou carimbo da autoridade que efetuou a entrega. Caso a entrega não possa ser efetuada, a Parte Requerente será informada da denegação e de seus motivos.

ARTIGO 16
Busca e Apreensão

1. A Parte Requerida, na medida em que seja permitido em sua legislação, executará o mandado de busca, apreensão e entrega de qualquer bem, incluindo documentos, registros ou objetos de prova, à Parte Requerente, desde que o pedido contenha informação que justifique tal ação, segundo as leis da Parte Requerente.

2. A Parte Requerida deverá fornecer informações que possam ser solicitadas pela Parte Requerente a respeito do resultado de qualquer busca, do local e das circunstâncias de apreensão e da custódia subseqüente dos bens apreendidos e suas condições.

3. A Parte Requerida poderá solicitar que a Parte Requerente aceite os termos e condições julgados necessários à proteção de interesses de terceiros quando da transferência de um bem.

ARTIGO 17
Produtos do Crime

1. A Parte Requerida deverá, mediante solicitação, empenhar-se para determinar se quaisquer produtos de crime estão localizados sob sua jurisdição e deverá informar a Parte Requerente dos resultados das suas investigações. Ao fazer a dita solicitação, a Parte Requerente deverá notificar a Parte Requerida sobre os elementos que levaram à conclusão de que tais produtos possam estar localizados em seu território.

2. Nos termos do parágrafo 1, quando da localização de bens que supostamente sejam produtos de crimes, a Parte Requerida deverá tomar as medidas permitidas por sua legislação para imobilizar e confiscar tais bens, particularmente visando a sua transferência à Parte Requerente.

3. Na aplicação deste Artigo, o direito de terceiros de boa fé será resguardado nos termos da legislação da Parte Requerida.

4. A Parte Requerida que tem custódia sobre os produtos confiscados deverá dispor desses produtos de acordo com sua legislação. Nos termos de sua legislação, a Parte Requerida poderá transferir os produtos confiscados à Parte Requerente.

ARTIGO 18
Certificação e Autenticação

1. Uma solicitação de assistência e a documentação que deverá acompanhá-la, bem como documentos ou outros materiais fornecidos em resposta a essa solicitação, não exigirão qualquer forma de certificação ou autenticação, salvo o previsto no parágrafo 2.

2. Excepcionalmente, a Parte Requerente poderá solicitar que documentos, registros ou outros materiais referidos no pedido de assistência sejam transmitidos segundo a forma específica de certificação ou autenticação solicitada, a fim de adequá-los à sua legislação. O pedido será atendido desde que seja admitido pela lei da Parte Requerida.

ARTIGO 19
Custos

1. A Parte Requerida deverá arcar com os custos da execução do pedido de assistência, exceto nas seguintes hipóteses, quando tais custos correrão por conta da Parte Requerente:

a) despesas relativas ao traslado de qualquer pessoa do território da Parte Requerida, a pedido da Parte Requerente, e qualquer ajuda de custo ou despesa devida a essa pessoa enquanto estiver na Parte Requerente em decorrência de uma solicitação formulada nos termos dos artigos 11 ou 12; e

b) despesas e honorários de peritos.

2. Caso a execução da solicitação implique custos de caráter extraordinário, as Partes deverão consultar-se a fim de determinar os termos e condições sob as quais a assistência poderá ser fornecida.

ARTIGO 20
Consultas

As Partes realizarão, de imediato, consultas entre si, mediante solicitação de uma delas, sobre a interpretação, aplicação ou execução do presente Acordo.

ARTIGO 21
Vigência e Denúncia

1. Este Acordo estará sujeito a ratificação. Este Acordo entrará em vigor mediante troca de instrumentos de ratificação.

2. Este Acordo se aplica a qualquer solicitação apresentada após sua vigência, mesmo que se refira a atos ou omissões cometidos anteriormente.

3. As Partes poderão emendar o presente Acordo por consentimento mútuo e tais emendas entrarão em vigor por meio de troca de notas, por escrito, entre as Partes, através dos canais diplomáticos, informando que as formalidades internas para sua entrada em vigor foram completadas.

4. Cada uma das Partes poderá denunciar este Acordo por meio de notificação escrita, através dos canais diplomáticos, a qualquer tempo. A denúncia produzirá efeito 6 (seis) meses depois da data da notificação.

Em testemunho do que, os abaixo-assinados, devidamente autorizados pelos seus respectivos Governos, assinam este Acordo.

Feito em Brasília, em 13 de dezembro de 2002, em dois exemplares originais, nos idiomas coreano, português e inglês, sendo todos os textos igualmente autênticos. Em caso de qualquer divergência de interpretação, o texto em inglês deverá prevalecer.

PELA REPÚBLICA DA CORÉIA

PELA REPÚBLICA FEDERATIVA DO BRASIL

[TRANSLATION – TRADUCTION]

TRAITÉ D'ENTRAIDE JUDICIAIRE EN MATIÈRE PÉNALE ENTRE LA RÉPUBLIQUE DE CORÉE ET LA RÉPUBLIQUE FÉDÉRATIVE DU BRÉSIL

La République de Corée et la République fédérative du Brésil (ci-après dénommées « les Parties »),

Désireuses d'améliorer l'efficacité des deux pays dans le domaine des enquêtes, des poursuites et de la prévention de la criminalité à travers la coopération et l'entraide judiciaire en matière pénale,

Sont convenues de ce qui suit :

Article premier. Champ d'application

1. Les Parties se prêteront mutuellement assistance, conformément aux dispositions du présent Traité, pour tout ce qui touche aux enquêtes, poursuites ou procédures en matière pénale.

2. Aux fins du présent Traité, l'expression « en matière pénale » s'entend des enquêtes, des poursuites ou des procédures relatives à toute infraction dont la sanction au moment de la demande d'assistance relève de la compétence des autorités judiciaires de la Partie requérante.

3. L'assistance comprend :

a) le recueil de témoignages ou de dépositions;

b) la fourniture d'informations, de documents, de dossiers et d'éléments de preuve;

c) la localisation ou l'identification de personnes ou de pièces;

d) la remise de documents;

e) l'exécution de demandes de perquisition et de saisie;

f) le transfèrement de détenus aux fins de témoigner ou d'aider à une enquête;

g) des mesures d'assistance liées à l'immobilisation, à la confiscation et au transfert de produits du crime; et

h) toute autre forme d'assistance qui n'est pas contraire à la législation de la Partie requise.

4. Le présent Traité ne s'applique pas :

a) à l'extradition de personnes;

b) à l'exécution dans la Partie requise de sentences pénales prononcées dans la Partie requérante, sauf dans la mesure autorisée par la législation de la Partie requise et par le présent Traité;

c) au transfèrement de prisonniers aux fins d'exécution d'une peine; et

d) au transfert d'actes de procédure judiciaire en matière pénale.

Article 2. Compatibilité avec d'autres traités et instruments internationaux

L'assistance et les procédures énoncées dans le présent Traité n'empêchent pas une Partie de prêter assistance à l'autre Partie en application des dispositions d'autres accords internationaux

applicables ou des dispositions de sa législation nationale. Les Parties peuvent également se prêter mutuellement assistance en vertu de tout autre arrangement bilatéral, accord ou toute autre pratique applicable.

Article 3. Autorité centrale

1. Chacune des Parties établit une autorité centrale chargée de transmettre ou de recevoir les demandes aux fins du présent Traité. L'autorité centrale pour la République de Corée est le Ministre de la justice ou un fonctionnaire désigné par ce Ministre. L'autorité centrale pour la République fédérative du Brésil est le Ministère de la justice.

2. Les autorités centrales communiquent par la voie diplomatique ou directement entre elles aux fins de l'application du présent Traité.

Article 4. Refus ou ajournement de l'assistance

1. L'assistance peut être refusée si la Partie requise estime que :

a) la demande concerne un délit politique ou une infraction en vertu du droit militaire qui ne serait pas une infraction de droit commun;

b) l'exécution de la demande risque de porter atteinte à sa souveraineté, sa sécurité, l'ordre public ou d'autres intérêts publics essentiels;

c) il y a de bonnes raisons de penser que la demande d'assistance a été déposée en vue de poursuivre ou d'infliger une peine à une personne en raison de sa race, de son sexe, de sa religion, de sa nationalité ou de ses opinions politiques, ou bien si la situation de cette personne risque d'être compromise pour l'une quelconque de ces raisons; ou

d) la conduite qui fait l'objet de l'enquête, des poursuites ou de toute autre procédure sur le territoire de la Partie requérante ne constituerait pas une infraction en vertu de la législation de la Partie requise.

2. L'assistance peut être ajournée par la Partie requise si l'exécution de la demande est susceptible d'interférer avec une enquête ou des procédures en cours dans la Partie requise.

3. Avant de refuser une demande ou d'en ajourner l'exécution, la Partie requise détermine en consultation avec la Partie requérante si l'assistance peut être accordée sous réserve des conditions qu'elle estime nécessaires. Si la Partie requérante souscrit à ces conditions, elle est tenue de les observer.

4. Si la Partie requise refuse ou ajourne la prestation d'assistance, elle informe la Partie requérante des raisons du refus ou de l'ajournement.

Article 5. Forme et contenu des demandes

1. Les demandes d'assistance contiennent :

a) le nom de l'autorité compétente en charge de l'enquête ou des procédures liées à la demande;

b) l'objet de la demande et une description de l'assistance demandée;

c) la description de l'objet et de la nature des enquêtes ou des poursuites, y compris un résumé des faits et lois pertinents, sauf en cas de demande de remise de documents; et

d) l'indication de tout délai souhaité en ce qui concerne l'exécution de la demande.

2. Les demandes d'assistance devront, pour autant que cela soit nécessaire et dans la mesure du possible, comporter également :

a) des informations sur l'identité, la nationalité et la localisation de toute personne appelée à témoigner;

b) des informations sur l'identité et la localisation de toute personne à qui une signification est destinée, le rapport entre cette personne et la procédure, et les modalités de sa signification;

c) des informations sur l'identité et la localisation de la personne et des pièces recherchées;

d) une description des personnes à fouiller ou des lieux à perquisitionner et des pièces à saisir;

e) une description de la manière dont un témoignage ou une déposition doivent être recueillis ou enregistrés;

f) une liste de questions à poser à un témoin;

g) une description de toute procédure spéciale ou exigence à suivre dans l'exécution de la demande;

h) des informations sur les frais et les indemnités auxquels a droit une personne appelée à comparaître dans la Partie requérante;

i) l'exigence de confidentialité et les motifs de celle-ci; et

j) toute autre information nécessaire à la bonne exécution de la demande.

3. Si la Partie requise estime que les informations contenues dans la demande s'avèrent insuffisantes pour lui permettre d'y donner suite, elle peut demander un complément d'information.

4. Toute demande est formulée par écrit; la Partie requise peut cependant accepter une demande sous une autre forme dans des situations urgentes. Dans un tel cas, la demande doit être confirmée par écrit peu après, à moins que la Partie requise en convienne autrement.

5. Les demandes, pièces justificatives et autres communications en application du présent Traité doivent être accompagnées d'une traduction dans la langue de la Partie requise ou d'une autre langue juridiquement acceptable pour cette Partie.

Article 6. Exécution des demandes

Les demandes d'assistance sont exécutées dans les meilleurs délais conformément à la législation de la Partie requise et, dans la mesure où cela n'est pas incompatible avec ladite législation, de la manière dont la Partie requérante le demande.

Article 7. Restitution d'articles et de documents

Lorsque la Partie requise le demande, la Partie requérante doit lui restituer dès que possible tous les documents, dossiers ou éléments de preuve fournis en vertu du présent Traité.

Article 8. Protection de la confidentialité

Sur demande, la Partie requise met tout en œuvre pour préserver la confidentialité d'une demande, de son contenu, des pièces justificatives et de toute mesure prise dans le cadre de l'exécution de la demande. Si la demande ne peut être exécutée sans enfreindre cette confidentialité, la Partie requise en informe la Partie requérante, qui décide alors si ladite demande doit néanmoins être exécutée.

Article 9. Restrictions d'utilisation

1. La Partie requérante ne peut, sans le consentement préalable de la Partie requise, utiliser aucune information ou preuve obtenue au titre du présent Traité dans une enquête, poursuite ou procédure autre que celle décrite dans la demande.

2. Sur demande, la Partie requérante préserve la confidentialité des informations et preuves fournies par la Partie requise, pour autant que le permettent les besoins de l'enquête et de la procédure décrites dans la demande.

3. Les informations et les preuves qui ont été rendues publiques dans la Partie requérante conformément aux paragraphes 1 ou 2 peuvent ensuite être utilisées pour quelque but que ce soit.

Article 10. Recueil de témoignages et de preuves dans la Partie requise

1. Conformément à sa législation et sur demande, la Partie requise recueille des témoignages ou obtient des dépositions de personnes ou leur demande de produire des éléments de preuve pour les transmettre à la Partie requérante.

2. La Partie requise autorise la présence des personnes spécifiées dans la demande au cours de l'exécution de la demande et permet à ces personnes d'interroger la personne appelée à témoigner ou à présenter une preuve. Si un tel interrogatoire direct n'est pas autorisé, ces personnes ont le droit de soumettre les questions à poser à la personne appelée à témoigner ou à présenter une preuve.

3. Une personne invitée à témoigner en vertu du présent article peut s'y refuser si la législation de la Partie requise lui donne le droit de ne pas témoigner dans des conditions similaires dans une procédure engagée sur le territoire de la Partie requise.

4. Si une personne invitée à témoigner sur le territoire de la Partie requise en application du présent article fait valoir le droit de refuser de témoigner en vertu de la législation de la Partie requérante,

a) la Partie requise :

   i) demande à la Partie requérante de fournir un certificat attestant l'existence de ce droit; ou

   ii) demande à la personne la preuve du droit de refus, qui sera transmise à la Partie requérante pour la détermination de l'existence du droit revendiqué par la personne et la délivrance d'un certificat; et

b) le certificat de la Partie requérante doit fournir une preuve suffisante de l'existence du droit.

Article 11. Témoignage ou assistance dans les enquêtes dans la Partie requérante

1. La Partie requérante peut demander l'assistance de la Partie requise pour appeler une personne à comparaître comme témoin ou expert dans la procédure ou aider à une enquête. Elle doit indiquer la mesure dans laquelle les frais et indemnités seront payés.

2. La Partie requise informe sans délai la Partie requérante de la réponse de la personne.

Article 12. Transfèrement de personnes détenues

1. À la demande de la Partie requérante, une personne détenue sur le territoire de la Partie requise est transférée temporairement à la Partie requérante pour aider à mener à bien des enquêtes ou des procédures, à condition que la personne et la Partie requise y consentent.

2. Lorsqu'une personne transférée doit être maintenue en détention en vertu de la législation de la Partie requise, la Partie requérante maintient cette personne en détention et la renvoie en état de détention à la Partie requise dès que la demande pour laquelle le transfèrement a été sollicité a été exécutée.

3. Lorsque la Partie requise informe la Partie requérante que l'état de détention de la personne transférée a pris fin, cette personne est remise en liberté et reçoit le même traitement qu'une personne visée à l'article 11.

4. Aux fins du présent article, la personne transférée bénéficie du temps passé en détention dans la Partie requérante pour le compte de la peine infligée dans la Partie requise.

Article 13. Sauf-conduit

1. Une personne présente sur le territoire de la Partie requérante au titre d'une demande en vertu des articles 11 ou 12 ne sera ni poursuivie, ni détenue ni soumise à quelque autre restriction de sa liberté personnelle sur le territoire de cette Partie, pour quelque acte ou omission que ce soit antérieurs à son départ du territoire de la Partie requise, ni être tenue de témoigner dans quelque procédure ou de prêter son concours à quelque enquête que ce soit, hormis la procédure ou l’enquête visée dans la demande.

2. Le paragraphe 1 cesse de s’appliquer si la personne, étant libre de partir, n'a pas quitté le territoire de la Partie requérante dans un délai de 15 jours après avoir été informée officiellement que sa présence n’était plus nécessaire ou si, l’ayant quitté, elle y est volontairement retournée.

3. Une personne qui ne consent pas à une demande faite en vertu de l'article 11 ou 12 ne pourra, de ce fait, encourir quelque sanction ou mesure coercitive que ce soit, nonobstant toute affirmation contraire dans la demande ou l'invitation.

Article 14. Fourniture de documents accessibles au public ou officiels

1. La Partie requise fournit à la Partie requérante des copies des documents, dossiers ou renseignements publics en la possession de ses Ministères et organismes gouvernementaux.

2. La Partie requise fournit des copies de tous les documents, dossiers ou renseignements qui sont en la possession de ses Ministères ou organismes gouvernementaux, mais qui ne sont pas accessibles au public, dans la même mesure et dans les mêmes conditions que celles auxquelles ils

peuvent être fournis à ses propres autorités répressives ou judiciaires. La Partie requise peut, à sa discrétion, refuser de donner suite à une demande en totalité ou en partie en vertu du présent paragraphe.

Article 15. Remise de documents

1. La Partie requise assure la remise des documents que lui transmet à cet effet la Partie requérante.

2. Une demande de remise d'un document requérant la comparution d'une personne est reçue par la Partie requise au plus tard 45 jours avant la date prévue de la comparution. Dans les cas urgents, la Partie requise peut renoncer à cette condition.

3. La Partie requise, après avoir effectué la remise, en fournit la preuve à la Partie requérante. Cette preuve portant la signature et le sceau de l'autorité ayant remis le document contient la date, le lieu et le mode de remise dudit document. Si les documents ne peuvent être remis, la Partie requérante en est informée ainsi que des motifs.

Article 16. Perquisition et saisie

1. La Partie requise, dans la mesure où sa législation le permet, donne suite à une demande de perquisition, de saisie et de transmission de pièces, y compris de documents, dossiers ou autres éléments de preuve, à la Partie requérante, à condition que la demande comporte les informations justifiant une telle action en vertu des lois de la Partie requérante.

2. La Partie requise fournit toutes les informations que pourrait lui demander la Partie requérante concernant le résultat de toute perquisition, le lieu et les circonstances de la saisie, et la garde ultérieure des pièces saisies.

3. La Partie requise peut demander à la Partie requérante de consentir aux termes et conditions jugés nécessaires pour protéger les intérêts de tiers à l'égard des pièces à transférer.

Article 17. Produits du crime

1. Sur demande, la Partie requise s'efforce d'établir si des produits du crime se trouvent sur son territoire et avise la Partie requérante des résultats de ses investigations. Dans sa demande, la Partie requérante informe la Partie requise des raisons qui la portent à croire que ces produits se trouvent sur son territoire.

2. Lorsque, conformément au paragraphe 1, des pièces soupçonnées d'être des produits du crime sont trouvées, la Partie requise prend les mesures autorisées par sa législation pour immobiliser et confisquer ces pièces, notamment en vue de leur transfert à la Partie requérante.

3. Lors de l'application du présent article, les droits des tierces parties de bonne foi sont respectés conformément à la législation de la Partie requise.

4. Dans le contrôle des produits confisqués, la Partie requise agit conformément à sa législation. Dans la mesure autorisée par sa législation, elle peut transférer les produits confisqués à la Partie requérante.

Article 18. Légalisation et authentification

1. Une demande d'assistance et les pièces justificatives, ainsi que les documents ou autres articles fournis en réponse à une telle demande, ne requièrent aucune forme de légalisation ou d'authentification, sous réserve du paragraphe 2.

2. Exceptionnellement, la Partie requérante peut demander que les documents, dossiers ou autres articles mentionnés dans la demande d'assistance soient transmis sous une forme spécifique de légalisation ou d'authentification afin de les rendre admissibles conformément à sa législation, et la Partie requise se conforme à la demande, à condition qu'elle ne soit pas interdite en vertu de sa législation.

Article 19. Frais

1. La Partie requise prendra à sa charge les frais d'exécution de la demande d'assistance, à l'exception des frais suivants que la Partie requérante prendra à sa charge :

a) les frais liés au transport de toute personne vers le territoire de la Partie requise et à partir de celui-ci, à la demande de la Partie requérante, ainsi que les indemnités ou frais à rembourser à cette personne pour la durée de son séjour dans la Partie requérante suite à une demande formulée au titre de l'article 11 ou 12; et

b) les frais et honoraires des experts.

2. S'il appert que l'exécution de la demande nécessite des frais de nature exceptionnelle, les Parties contractantes se concertent pour déterminer les conditions auxquelles la demande peut être exécutée.

Article 20. Consultations

Les Parties se consultent dans les meilleurs délais, à la demande de l'une ou l'autre, concernant l'interprétation, l'application ou la mise en œuvre du présent Traité.

Article 21. Entrée en vigueur et dénonciation

1. Le présent Traité est soumis à ratification. Il entre en vigueur à la date de l'échange des instruments de ratification.

2. Le présent Traité s'applique à toutes les demandes présentées après son entrée en vigueur même si les actes ou omissions visés ont été commis avant son entrée en vigueur.

3. Les Parties peuvent modifier le présent Traité d'un commun accord et toute modification entrera en vigueur à la date de l'échange de notifications écrites entre les Parties, par la voie diplomatique, indiquant que toutes les exigences internes pour son entrée en vigueur ont été accomplies.

4. Chacune des Parties peut à tout moment dénoncer le présent Traité par notification écrite adressée par la voie diplomatique. La dénonciation prendra effet 6 mois suivant le dépôt de la notification.

EN FOI DE QUOI, les soussignés à ce dûment autorisés par leurs Gouvernements respectifs, ont signé le présent Traité.

FAIT à Brasilia, le 13 décembre 2002, en double exemplaire, en langues coréenne, portugaise et anglaise, tous les textes faisant également foi. En cas de divergence d'interprétation, le texte anglais prévaut.

Pour la République de Corée :

KIM MYONG-BAI

Pour la République fédérative du Brésil :

PAUL DE TARSO RAMOS RIBEIRO

No. 49672

Republic of Korea
and
Bosnia and Herzegovina

Agreement between the Government of the Republic of Korea and the Government of Bosnia and Herzegovina concerning loans from the Economic Development Cooperation Fund. Sarajevo, 5 October 2005

Entry into force: *5 October 2005 by signature, in accordance with article 10*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *Republic of Korea, 6 July 2012*

Not published in print, in accordance with article 12(2) of the General Assembly regulations to give effect to Article 102 of the Charter of the United Nations, as amended.

République de Corée
et
Bosnie-Herzégovine

Accord entre le Gouvernement de la République de Corée et le Gouvernement de la Bosnie-Herzégovine relatif à des prêts du Fonds de coopération pour le développement économique. Sarajevo, 5 octobre 2005

Entrée en vigueur : *5 octobre 2005 par signature, conformément à l'article 10*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 6 juillet 2012*

Non disponible en version imprimée, conformément au paragraphe 2 de l'article 12 du règlement de l'Assemblée générale destiné à mettre en application l'Article 102 de la Charte des Nations Unies, tel qu'amendé.

No. 49673

Republic of Korea
and
Bosnia and Herzegovina

Arrangement between the Government of the Republic of Korea and the Government of Bosnia and Herzegovina concerning a loan from the Economic Development Cooperation Fund. Sarajevo, 5 October 2005

Entry into force: *5 October 2005 by signature, in accordance with article 7*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *Republic of Korea, 6 July 2012*

Not published in print, in accordance with article 12(2) of the General Assembly regulations to give effect to Article 102 of the Charter of the United Nations, as amended.

République de Corée
et
Bosnie-Herzégovine

Arrangement entre le Gouvernement de la République de Corée et le Gouvernement de la Bosnie-Herzégovine relatif à un prêt du Fonds de coopération pour le développement économique. Sarajevo, 5 octobre 2005

Entrée en vigueur : *5 octobre 2005 par signature, conformément à l'article 7*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 6 juillet 2012*

Non disponible en version imprimée, conformément au paragraphe 2 de l'article 12 du règlement de l'Assemblée générale destiné à mettre en application l'Article 102 de la Charte des Nations Unies, tel qu'amendé.

No. 49674

Republic of Korea
and
Belarus

Trade Agreement between the Government of the Republic of Korea and the Government of the Republic of Belarus. Seoul, 17 May 2004

Entry into force: *8 November 2004 by notification, in accordance with article 15*

Authentic texts: *English, Korean and Russian*

Registration with the Secretariat of the United Nations: *Republic of Korea, 6 July 2012*

République de Corée
et
Bélarus

Accord commercial entre le Gouvernement de la République de Corée et le Gouvernement de la République du Bélarus. Séoul, 17 mai 2004

Entrée en vigueur : *8 novembre 2004 par notification, conformément à l'article 15*

Textes authentiques : *anglais, coréen et russe*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 6 juillet 2012*

[ENGLISH TEXT – TEXTE ANGLAIS]

TRADE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE REPUBLIC OF BELARUS

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

Desiring to develop and expand trade relations, and to create favorable conditions for the substantial and harmonious development and diversification of trade between the two countries on the basis of equality, non-discrimination and reciprocity, and

Considering that economic ties are an important and necessary element in the strengthening of their bilateral relations,

Have agreed as follows:

Article 1

1. The Contracting Parties shall take all appropriate measures to encourage and facilitate trade relations between the two countries and to promote the harmonious development and diversification of their trade in accordance with the laws and regulations in force in each country.

2. The Contracting Parties shall, subject to their relevant laws and regulations in force in each country, provide the maximum facilities possible for the purpose of increasing the volume of trade between the two countries.

Article 2

1. Each Contracting Party shall grant each other the most-favored-nation treatment in all matters relating to trade, particularly with respect to:

(a) customs duties and charges of any kind imposed on or in connection with importation or exportation, including the method of levying such duties and charges;

(b) methods of payment for imports and exports, and the international transfer of such payments;

(c) rules and formalities in connection with importation and exportation, including the provisions relating to customs clearance, transit, warehousing and transshipment;
(d) taxes and other internal charges of any kind applied directly or indirectly to imported goods; and
(e) rules concerning the sale, purchase, transport, distribution, storage and use of goods in domestic markets.

2. Each Contracting Party shall grant imports of goods and services originating from the territory of the other country non-discriminatory treatment regarding the application of quantitative restrictions and the granting of licenses.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to:
(a) advantages which either Contracting Party has granted or may grant to its neighbouring countries to facilitate frontier traffic;
(b) advantages which result from a customs union or a free trade area to which either Contracting Party is or may hereafter become a party; or
(c) advantages which either Contracting Party has granted or may grant to any developing country under the Marrakesh Agreement Establishing the World Trade Organization and other international agreements.

Article 3

1. The Contracting Parties shall have the right to request certificates of origin at the time of the importation of any goods.

2. The country of origin shall be considered the country in which the product has been produced or has undergone sufficient processing in accordance with the laws and regulations of that country.

Article 4

1. Trade in goods and services between both Contracting Parties shall be carried out on the basis of contracts concluded between natural and juridical persons in accordance with international practice and the laws and regulations of each country.

2. Unless otherwise agreed between the parties to individual transactions, all commercial transactions between the natural and juridical persons of the Republic of Korea and the Republic of Belarus shall be made in freely convertible currencies, in accordance with the laws and regulations in force in each country.

Article 5

The natural and juridical persons of each country shall enjoy the most-favored-nation treatment in relation to the protection of their persons and property in their performance of commercial activities in the territory of the other country.

Article 6

1. Neither Contracting Party shall impose restrictions on the transfer of freely convertible currencies from its territory obtained in a lawful manner in connection with trade in goods and services made by the natural and juridical persons of the other country.

2. Without derogation from paragraph 1 of this Article, in connection with trade in goods and services, each Contracting Party shall grant to the natural and juridical persons of the other country the most-favored-nation treatment with respect to:

(a) opening and maintaining accounts, in both foreign and local currencies, and having access to funds deposited, in financial institutions located in the territory of its country;
(b) payments, remittances and transfers of freely convertible currencies or financial instruments representative thereof, between the two countries, as well as between its country and any third country;
(c) rates of exchange offered by financial institutions authorized to deal in foreign exchange, and authorized means of obtaining freely convertible currencies; and
(d) the receipt and use of local currency.

Article 7

1. The Contracting Parties shall encourage the natural and juridical persons of the two countries to look for opportunities to expand their bilateral trade and to cooperate in a number of ways, including the exchange of information.

2. Each Contracting Party shall encourage and facilitate the holding of trade promotional events such as fairs, exhibitions, visits and seminars within its territory and in the territory of the other country. Similarly, the Contracting Parties shall also encourage and facilitate the participation of relevant organizations, citizens and companies of both countries in such events.

Article 8

The Contracting Parties shall, in accordance with the respective laws and regulations in force in each country, exempt the following goods from customs duties, taxes and other charges upon their import and export:
(a) samples and advertising materials of no commercial value;
(b) tools and articles imported for assembly or repair purposes, provided that such tools and articles are re-exported;

(c) goods to be displayed at fairs and exhibitions, provided that such goods are re-exported;

(d) specialized tools and equipment which are not readily available locally, for use in the construction of plants and other industrial structures imported by the natural or juridical person carrying out such construction, provided that such tools and equipment are re-exported; and

(e) specialized containers and packages of the type used in international trade on a returnable basis.

Article 9

The Contracting Parties shall, in accordance with the respective laws and regulations in force in each country, facilitate the passage and transit of goods which:

(a) originate from the territory of the other country and are destined for a third country; or

(b) originate from a third country and are destined for the territory of the other country.

Article 10

1. The Contracting Parties shall encourage the prompt and equitable settlement of disputes arising between natural and juridical persons of the Republic of Korea and the Republic of Belarus by arbitration. Provisions regarding the settlement of disputes by arbitration or other kinds of dispute settlement, agreed upon by the parties to commercial transactions, may be agreed upon in contracts or separately concluded agreements.

2. The arbitration may take place in any country, mutually agreed upon by the parties to the dispute, which is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the provisions of which will be respected by both countries.

3. The Contracting Parties shall not prohibit, and this Agreement shall not impair, other forms of arbitration or dispute settlement considered by the parties to the dispute as mutually acceptable.

4. Each Contracting Party shall ensure that an effective means exists within the territory of its country for the recognition and enforcement of arbitral awards.

Article 11

1. The provisions of this Agreement shall not limit the right of either Contracting Party to apply prohibitions or restrictions on the import, export and transit of goods which are designed for:

(a) the protection of national security;

(b) the protection of public health or the prevention of diseases and pests in animals or plants; or

(c) the preservation of national treasures of artistic, historic and archaeological value.

2. Such prohibitions or restrictions shall not, however, constitute a means of unreasonable discrimination or disguised restrictions on trade between the two countries.

Article 12

The natural and juridical persons of each country shall be accorded national treatment with respect to access to all courts and administrative bodies in the territory of the other country, as plaintiffs, defendants or in any other capacity. They shall not claim or enjoy immunity from suits or execution of judgment, proceedings for the recognition and enforcement of arbitral awards or other liability in the territory of the other country with respect to commercial transactions. They also shall not claim or enjoy immunities from taxation with respect to commercial transactions, except as may be provided in other agreements between the Contracting Parties.

Article 13

Representatives of both Contracting Parties, at the request of either Contracting Party, shall, in the spirit of cooperation and mutual understanding, discuss measures aimed at expanding trade relations between the two countries or the solution of problems arising out of the implementation of this Agreement. The place and date of such discussions shall be established, if necessary, by mutual consent.

Article 14

Disputes between the Contracting Parties concerning the interpretation or implementation of this Agreement shall be settled amicably through diplomatic channels.

Article 15

1. This Agreement shall enter into force on the date of the last notification by which one Contracting Party notifies the other Contracting Party that all legal requirements necessary for its entry into force have been fulfilled.

2. This Agreement shall remain in force for a period of five years and shall be extended for successive periods of five years, unless either Contracting Party notifies the other Contracting Party in writing, six months in advance, of its intention to terminate the Agreement.

3. The provisions of this Agreement shall continue to be applied after its termination to all commercial transactions concluded during the period of its validity but not fully executed at the date of its termination.

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

Done in duplicate at Seoul this 17th day of May 2004, in the Korean, Russian 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 REPUBLIC OF BELARUS

[KOREAN TEXT – TEXTE CORÉEN]

대한민국 정부와 벨라루스공화국 정부간의 무역협정

대한민국 정부와 벨라루스공화국 정부(이하 "체약당사자"라 한다)는,

평등·비차별 및 상호주의의 기초 위에서 양국간 무역관계를 발전·확대시키고양국간 무역의 실질적이고 조화로운 발전과 다변화를 위한 유리한 여건을 조성하기를 희망하며,

경제적 유대가 양국의 상호 관계 강화에 중요하고 필수적인 요소임을 고려하여,

다음과 같이 합의하였다.

제 1 조

1. 양 체약당사자는 자국에서 시행 중인 법령에 따라 양국 간의 무역관계를 장려·촉진하고, 양국 간 무역의 조화로운 발전과 다양화를 증진시키기 위하여 적절한 모든 조치를 행한다.

2. 양 체약당사자는 자국에서 시행 중인 관계법령에 따라 양국 간 무역 규모를 확대하기 위하여 가능한 최대한의 편의를 제공한다.

제 2 조

1. 각 체약당사자는 무역과 관련된 모든 사항, 특히 각목의 사항에 대하여 상호 최혜국대우를 부여한다.

가. 수출입에 대하여 또는 수출입과 관련하여 부과되는 모든 종류의 관세 및 부과금과 그러한 관세 및 부과금의 징수방법

나. 수출입을 위한 지불방법과 그러한 지불의 국제적 이전

다. 통관·통과·보세창고 및 환적에 관한 규정을 포함한 수출입에 관련된 규칙과 절차

라. 수입품에 직접적으로 또는 간접적으로 부과되는 모든 종류의 조세 및 그 밖의 국내부과금

마. 국내시장에서의 재화의 판매·구입·수송·유통·보관 및 그 이용에 관한 규칙

2. 각 체약당사자는 수량제한의 적용이나 허가의 부여와 관련하여 타방국을 원산지로 하는 재화와 용역의 수입에 대하여 비차별대우를 부여한다.

3. 제1항 및 제2항의 규정은 다음 사항에 적용되지 아니한다.

가. 일방체약당사자가 국경무역을 촉진시키기 위하여 인접국가에 부여하여 왔거나 부여하게 될 혜택

나. 일방체약당사자가 당사자이거나 당사자가 될 관세동맹이나 자유무역지대로부터 발생하는 혜택

다. 일방체약당사자가 세계무역기구설립을위한마라케쉬협정과 기타 국제협정 하에서 개발도상국에 부여하여 왔거나 부여하게 될 혜택

제 3 조

1. 양 체약당사자는 재화의 수입시에 원산지증명을 요구할 수 있는 권리를 갖는다.

2. 원산지국은 그 나라의 법령에 따라 그 곳에서 물품이 생산되었거나 또는 충분히 가공되었던 국가로 간주된다.

제 4 조

1. 양 체약당사자 간의 재화와 용역의 교역은 국제적 관행과 각국의 법령에 따라 자연인 및 법인 간에 체결된 계약에 기초하여 이루어진다.

2. 개별 상거래의 당사자 간에 달리 합의되지 않는 한, 대한민국과 벨라루스공화국의 자연인 및 법인간의 모든 상거래는 각국에서 유효한 법령에 따라 자유태환성화폐로 이루어진다.

제 5 조

각 국가의 자연인 및 법인은 타방국 영역 안에서 상거래 활동을 함에 있어서 신체와 재산의 보호와 관련하여 최혜국대우를 향유한다.

제 6 조

1. 어느 일방체약당사자도 타방국의 자연인 및 법인에 의한 재화와 용역의 교역과 관련하여 합법적인 방법으로 취득한 자유태환성통화를 자국의 영역 밖으로 송금하는 것에 제한을 부과하지 아니한다.

2. 이 조 제1항을 침해함이 없이, 재화와 용역의 교역과 관련하여 각 체약당사자는 타방국가의 자연인 및 법인에 대하여 다음 각호에 관하여 최혜국대우를 부여한다.

가. 자국의 영역 안에 소재하는 금융기관에 외환 및 현지화 계좌를 개설·유지하거나 예치된 자금의 이용에 관한 사항

나. 일방국과 제3국 간 또는 양국 간에 이루어지는 자유태환성통화나 이를 표시하는 금융증서의 지불·송금 및 이전에 관한 사항

다. 외국환업무의 취급인가를 받은 금융기관이 제공하는 환율 및 자유태환성통화의 획득을 위한 인가된 수단에 관한 사항

라. 현지통화의 수령 및 사용에 관한 사항

제 7 조

1. 각 체약당사자는 양국의 자연인 및 법인이 정보의 교환을 포함하여 다양한 방법으로 양국간 무역을 확대할 기회를 모색하도록 장려한다.

2. 각 체약당사자는 자국 및 타방국 영역 안에서 박람회·전시회·방문 및 세미나 등 무역증진을 위한 행사의 개최를 장려·촉진한다. 또한 양 체약당사자는 그러한 행사에 양국의 관련 기관·시민 및 기업의 참가를 장려·촉진한다.

제 8 조

양 체약당사자는 각국에서 시행중인 법령에 따라 다음 각목의 재화의 수입 및 수출시에 관한 관세·조세 및 그 밖의 부과금을 면제한다.

가. 상업적 가치가 없는 견본품이나 광고물

나. 조립이나 수리를 목적으로 수입되는 도구나 물품. 다만 그러한 도구와 물품은 재수출되어야 한다.

다. 박람회 및 전시회 전시용품. 다만, 그러한 전시용품은 재수출되어야 한다.

라. 공장 및 그 밖의 산업시설의 건설에 사용하기 위하여 그러한 건설을 수행하는 자연인 또는 법인이 수입하는 특수도구 및 장비로서 국내에서 용이하게 조달될 수 없는 것. 다만 그러한 도구 및 장비는 재수출되어야 한다.

마. 국제무역에 사용되는 특수컨테이너 및 용기. 다만, 그러한 컨테이너 및 용기는 반환되어야 한다.

제 9 조

양 체약당사자는 자국에서 시행중인 법령에 따라 다음 재화의 운송 및 통과를 촉진시킨다.

가. 상대국을 원산지로 하여 제3국으로 향하는 재화

나. 제3국을 원산지로 하여 상대국으로 향하는 재화

제 10 조

1. 양 체약당사자는 중재를 통해 벨라루스공화국과 대한민국의 자연인 및 법인간에 발생하는 분쟁의 신속하고 공평한 해결을 장려한다. 상거래 당사자간에 합의된 중재나 다른 방식의 분쟁해결이 계약이나 별도로 체결되는 협정에 규정될 수 있다.

2. 중재는 양 당사자가 상호 합의하는 "외국중재판정의승인및집행에관한국제연합협약"의 당사국에서 이루어질 수 있으며 양국은 동 협약의 규정을 존중한다.

3. 양 체약당사자는 분쟁당사자가 상호 수락하는 다른 형태의 중재 또는 분쟁해결을 금지하지 아니하며 이 협정은 이를 저해하지 아니한다.

4. 각 체약당사자는 자국의 영역 안에 중재판정의 승인 및 집행을 위한 효과적인 수단이 마련되도록 보장한다.

제 11 조

1. 이 협정의 규정은 일방체약당사자가 다음 목적을 위하여 재화의 수입·수출 및 통과를 금지·제한할 수 있는 권리를 제약하지 아니한다.

가. 국가안전의 보호

나. 공중위생의 보호 또는 동식물의 질병과 해충의 방지

다. 예술적·역사적 및 고고학적 가치를 지닌 국가보물의 보존

2. 그러나 이러한 금지나 제한이 양국 간 무역에 대한 비합리적 차별이나 위장된 제한의 수단으로 이용되어서는 아니된다.

제 12 조

각국의 자연인 및 법인은 타방국 영역 내에 있는 모든 법원과 행정기관에 원고, 피고 또는 기타의 자격으로서 출석함에 있어서 내국민대우를 받는다. 그들은 상거래와 관련하여 타방국 영역 안에서의 소송 또는 판결의 집행, 중재판정의 승인 및 집행을 위한 절차 또는 기타의 책임으로부터 면제를 요구하거나 향유하지 아니한다. 그들은 양 체약당사자 간에 체결된 다른 협정에 규정되어 있는 경우를 제외하고는 상거래와 관련하여 과세로부터 면제를 요구하거나 향유하지 아니한다.

제 13 조

양 체약당사자의 대표는 어느 일방체약당사자의 요청에 따라, 협력과 상호 이해의 정신으로, 양국간 무역관계를 확대하기 위한 조치와 이 협정의 이행으로부터 발생하는 문제를 해결하기 위한 방안에 대하여 논의한다. 필요한 경우, 그러한 논의의 장소 및 일자는 상호 합의에 의하여 결정한다.

제 14 조

이 협정의 해석이나 이행과 관련된 체약당사자 간의 분쟁은 외교경로를 통하여 우호적으로 해결한다.

제 15 조

1. 이 협정은 발효를 위해 필요한 모든 법적 요건이 완료되었음을 일방 체약당사자가 타방 체약당사자에게 통보하는 나중의 통보일에 발효한다.

2. 이 협정은 5년의 기간동안 유효하며, 어느 일방체약당사자가 타방체약당사자에게 협정의 종료의사를 6월전에 서면으로 통보하지 아니하는 한 5년씩 계속 연장된다.

3. 이 협정의 유효기간 중 체결되었으나 이 협정의 종료일까지 완전히 이행되지 아니한 모든 상거래에 대하여는 이 협정이 종료된 후에도 이 협정의 규정이 계속 적용된다.

이상의 증거로, 아래 서명자는 그들 각자의 정부로부터 정당하게 권한을 위임받아 이 협정에 서명하였다.

2004년 5월 17일 서울에서 동등하게 정본인 한국어·러시아어 및 영어로 각 2부씩 작성하였다. 해석상의 차이가 있을 때에는 영어본이 우선한다.

대한민국 정부를 대표하여

벨라루스 정부를 대표하여

[RUSSIAN TEXT – TEXTE RUSSE]

ТОРГОВОЕ СОГЛАШЕНИЕ
МЕЖДУ ПРАВИТЕЛЬСТВОМ РЕСПУБЛИКИ КОРЕЯ
И
ПРАВИТЕЛЬСТВОМ РЕСПУБЛИКИ БЕЛАРУСЬ

Правительство Республики Корея и Правительство Республики Беларусь, именуемые в дальнейшем Договаривающимися Сторонами,

желая развивать и расширять торговые связи, создавать благоприятные условия для прочного и гармоничного развития и диверсификации торговли между двумя странами на основе равенства, недискриминации и взаимности,

рассматривая экономические связи как важный и необходимый элемент укрепления двусторонних отношений

договорились о нижеследующем:

Статья 1

1. Договаривающиеся Стороны предпримут все соответствующие меры для поощрения и развития торговых связей между двумя странами и будут содействовать гармоничному развитию и диверсификации торговли в соответствии с действующим в каждой из стран законодательством.

2. Договаривающиеся Стороны согласно действующему законодательству каждой из стран создадут максимально возможные благоприятные условия в целях увеличения объема торговли между двумя странами.

Статья 2

1. Каждая из Договаривающихся Сторон предоставит друг другу режим наибольшего благоприятствования во всех вопросах, связанных с торговлей, в частности в отношении:

а) таможенных пошлин и сборов любого рода, налагаемых или применяемых при импорте или экспорте, включая способы взимания таких пошлин и сборов;

б) форм расчетов при осуществлении платежей в связи с импортом и экспортом, а также международного перевода таких платежей;

в) правил и формальностей, связанных с импортом и экспортом, включая положения, относящиеся к таможенному оформлению, транзиту, складированию и перегрузке;

г) налогов и других внутренних сборов любого рода, налагаемых прямо или косвенно к импортируемым товарам;

д) правил, касающихся продажи, покупки, транспортировки, распространения, хранения и использования товаров на внутренних рынках.

2. Каждая из Договаривающихся Сторон предоставит в связи с импортом товаров и услуг, происходящих с территории другой страны, недискриминационный режим в отношении применения количественных ограничений и выдачи лицензий.

3. Положения пунктов 1 и 2 настоящей статьи не распространяются на преимущества:

а) которые любая из Договаривающихся Сторон предоставила или может предоставить соседним странам в целях упрощения приграничной торговли;

б) вытекающие из участия в таможенном союзе или зоне свободной торговли, участником которых любая из Договаривающихся Сторон является или может стать в будущем;

в) которые одна из Договаривающихся Сторон предоставила или может предоставить любой развивающейся стране в соответствии с Марракешским соглашением об учреждении Всемирной торговой организации, а также другими международными соглашениями.

Статья 3

1. Договаривающиеся Стороны имеют право при импорте любых товаров требовать представления сертификатов об их происхождении.

2. Страной происхождения будет считаться то государство, где товар был произведен или подвергнут достаточной переработке в соответствии с законодательством этого государства.

Статья 4

1. Торговля товарами и услугами между обеими Договаривающимися Сторонами будет осуществляться на основе договоров, заключаемых между физическими и юридическими лицами в соответствии с международной практикой и законодательством каждой из стран.

2. Если иначе не будет согласовано между сторонами по сделке, все сделки между физическими и юридическими лицами Республики Корея и Республики Беларусь будут осуществляться в свободно конвертируемой валюте в соответствии с законодательством, действующем в каждой из стран.

Статья 5

Физические и юридические лица каждой из стран пользуются режимом наибольшего благоприятствования в отношении зашиты их личностей и собственности при осуществлении коммерческой деятельности на территории другой страны.

Статья 6

1. Ни одна из Договаривающихся Сторон не будет налагать ограничения на перевод со своей территории физическими и юридическими лицами другой страны свободно конвертируемой валюты, приобретенной законным способом в связи с торговлей товарами и услугами.

2. Без ущерба для пункта 1 настоящей статьи каждая Договаривающаяся Сторона в связи с торговлей товарами и услугами предоставит физическим и юридическим лицам другой страны режим наибольшего благоприятствования в отношении:

а) открытия и поддержания счетов как в иностранной, так и в национальной валюте, а также доступа к средствам, депонированным в финансовых учреждениях, расположенных на территории ее страны;

б) осуществления платежей, оплаты и перевода свободно конвертируемой валюты или связанных с ними финансовых инструментов между двумя странами, а также между ее страной и любой третьей страной;

в) обменного курса, предлагаемого финансовыми учреждениями, имеющими право на занятие валютными операциями и разрешенных способов приобретения свободно конвертируемой валюты;

г) получения и использования местной валюты.

Статья 7

1. Договаривающиеся Стороны поощряют физических и юридических лиц обеих стран в поиске возможностей расширения двусторонней торговли и сотрудничества в ряде областей, включая обмен информацией.

2. Каждая Договаривающаяся Сторона поощряет и способствует проведению мероприятий, содействующих развитию торговли, таких как ярмарки, выставки, визиты и семинары на своей территории и на территории другой страны. Аналогичным образом Договаривающиеся Стороны также поощряют и способствуют участию соответствующих организаций, граждан и компаний обеих стран в подобных мероприятиях.

Статья 8

Договаривающиеся Стороны в соответствии с законодательством, действующем в каждой из стран, при импорте и экспорте освобождают от таможенных пошлин, налогов и других сборов следующие товары:

а) образцы и рекламные материалы, не имеющие коммерческой ценности;

б) инструменты и принадлежности, импортируемые в целях сборки или ремонта, при условии, что такие инструменты и принадлежности будут реэкспортированы;

в) товары, предназначенные для демонстрации на ярмарках и выставках, при условии, что данные товары будут реэкспортированы;

г) специализированные инструменты и оборудование, являющиеся труднодоступными на местном рынке и используемые при строительстве заводов и других промышленных конструкций, которые импортируются физическими и юридическими лицами, осуществляющими такое строительство, при условии, что такие инструменты и оборудование будут реэкспортированы;

д) специальные контейнеры и тара, используемые в международной торговле, на возвратной основе.

Статья 9

Договаривающиеся Стороны в соответствии с законодательством, действующем в каждой из стран, способствуют прохождению и транзиту товаров, которые происходят:

а) с территории другой страны и предназначены для третьей страны;

б) из третьей страны и предназначены для территории другой страны.

Статья 10

1. Договаривающиеся Стороны поощряют своевременное и справедливое урегулирование споров, возникающих между физическими и юридическими лицами Республики Корея и Республики Беларусь, путем арбитража. Положения, касающиеся урегулирования споров путем арбитража или другими способами, согласованными сторонами по сделке, могут быть предусмотрены непосредственно в договорах или отдельно заключаемых соглашениях.

2. Арбитраж может проходить в любом государстве, взаимно согласованном сторонами спора, участвующем в Конвенции Организаций Объединенных Наций по признанию и исполнению решений иностранных арбитражных судов, положения которой будут соблюдаться обеими странами.

3. Ничто в настоящем Соглашении не будет препятствовать, а Договаривающиеся Стороны не будут запрещать сторонам в споре определять другие формы арбитража или разрешения споров, которые они сочтут взаимоприемлемыми.

4. Каждая Договаривающаяся Сторона гарантирует, что на территории ее страны существуют эффективные средства по признанию и исполнению арбитражных решений.

Статья 11

1. Положения настоящего Соглашения не ограничивают права любой из Договаривающихся Сторон применять ограничения или запреты в отношении импорта, экспорта или транзита товаров, в целях:

а) защиты национальной безопасности;

б) защиты здоровья граждан или предупреждения распространения заболеваний и вредителей у животных и растений;

в) сохранения национального достояния, имеющего художественную, историческую и археологическую ценность.

2. Подобные запреты или ограничения тем не менее не будут использоваться в качестве средства для необоснованной дискриминации или скрытого ограничения торговли между обеими странами.

Статья 12

Физические и юридические лица каждой из стран будут пользоваться национальным режимом в отношении доступа в суды и административные органы на территории другой страны, в качестве истца, ответчика или в любом другом качестве. В том, что касается коммерческих сделок, они не будут требовать предоставления или пользоваться иммунитетом в отношении судебных разбирательств или исполнения решения суда, разбирательств по признанию и приведению в исполнение арбитражных решений либо иной ответственности на территории другой страны. Они также не будут претендовать на освобождение или освобождаться от налогообложения в отношении коммерческих сделок, если иное не предусмотрено в других соглашениях между Договаривающимися Сторонами.

Статья 13

Представители обеих Договаривающихся Сторон, по запросу любой из Договаривающихся Сторон, в духе сотрудничества и взаимопонимания будут обсуждать меры, направленные как на расширение торговых отношений между двумя странами, так и на решение проблем, возникающих в ходе исполнения настоящего Соглашения. Место и сроки проведения таких

консультаций в случае необходимости будут определяться по взаимной договоренности.

Статья 14

Споры между Договаривающимися Сторонами в отношении толкования или применения настоящего Соглашения будут урегулированы дружественным способом по дипломатическим каналам.

Статья 15

1. Настоящее Соглашение вступит в силу с даты последнего из уведомлений, которым одна из Договаривающихся Сторон уведомит другую Договаривающуюся Сторону о выполнении всех внутригосударственных процедур, необходимых для его вступления в силу.

2. Настоящее Соглашение остается в силе в течение пяти лет и будет продлеваться на последующие пятилетние сроки, до тех пор, пока одна из Договаривающихся Сторон не уведомит другую Договаривающуюся Сторону в письменной форме не менее чем за 6 месяцев до даты, с которой она намерена прекратить действие Соглашения.

3. Положения настоящего Соглашения после прекращения его действия будут применяться ко всем сделкам, заключенным во время его действия, но не исполненным полностью на дату прекращения его действия.

В свидетельство чего представители, должным образом на то уполномоченные своими Правительствами, подписали настоящее Соглашение.

Совершено в двух подлинных экземплярах в г. Сеуле 17 мая 2004 года, каждый на корейском, русском и английском языках, причем все тексты являются равноаутентичными. В случае расхождения в толковании положений настоящего Соглашения преимущество имеет текст на английском языке.

За Правительство Республики Корея

За Правительство Республики Беларусь

[TRANSLATION – TRADUCTION]

ACCORD COMMERCIAL ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE DE CORÉE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE DU BÉLARUS

Le Gouvernement de la République de Corée et le Gouvernement de la République du Bélarus (ci-après dénommés « les Parties contractantes »),

Désireux de développer et d'élargir les relations commerciales et de créer des conditions favorables au développement et la diversification substantiels et harmonieux des échanges entre les deux pays sur la base de l'égalité, de la non-discrimination et de la réciprocité, et

Considérant que les liens économiques constituent un élément important et nécessaire du renforcement de leurs relations bilatérales,

Sont convenus de ce qui suit :

Article premier

1. Les Parties contractantes prennent toutes les mesures appropriées pour encourager et faciliter les relations commerciales entre les deux pays et promouvoir le développement et la diversification harmonieux de leurs échanges conformément à la législation et à la réglementation en vigueur dans chaque pays.

2. Sous réserve de la législation et de la réglementation en vigueur dans chaque pays, les Parties contractantes assurent le plus grand nombre de moyens possibles pour accroître le volume des échanges entre les deux pays.

Article 2

1. Chaque Partie contractante accorde à l'autre Partie le traitement de la nation la plus favorisée pour tout ce qui concerne les échanges commerciaux, notamment en matière de :

a) droits de douane et redevances de toute nature imposés sur les importations et les exportations ou afférents à celles-ci, y compris leurs modes de perception;

b) modes de paiement des importations et des exportations ainsi que des transferts internationaux desdits paiements;

c) règles et formalités applicables aux importations et aux exportations, y compris les dispositions relatives au dédouanement, au transit, à l'entreposage et au transbordement;

d) taxes et autres redevances intérieures de toute nature perçues directement ou indirectement sur les marchandises importées; et

e) règles concernant la vente, l'achat, le transport, la distribution, l'entreposage et l'utilisation des marchandises sur les marchés intérieurs.

2. Chaque Partie contractante accorde aux importations de marchandises et de services en provenance du territoire de l'autre pays un traitement non discriminatoire en ce qui concerne l'application des restrictions quantitatives et l'octroi de licences.

3. Les dispositions des paragraphes 1 et 2 ne s'appliquent pas :

a) aux avantages que l'une ou l'autre Partie contractante a accordés ou pourrait accorder à des pays voisins en vue de faciliter le commerce frontalier;

b) aux avantages qui résultent d'une union douanière ou d'une zone de libre-échange à laquelle l'une ou l'autre des Parties contractantes serait ou deviendrait partie; ou

c) aux avantages que l'une ou l'autre Partie contractante a accordés ou pourrait accorder à un pays en développement en vertu de l'Accord de Marrakech instituant l'Organisation mondiale du commerce et d'autres accords internationaux.

Article 3

1. Les Parties contractantes ont le droit de demander des certificats d'origine au moment de l'importation de toute marchandise.

2. Est considéré comme pays d'origine le pays où le produit a été fabriqué ou a fait l'objet d'une transformation suffisante conformément aux lois et règlements dudit pays.

Article 4

1. Le commerce de biens et services entre les deux Parties contractantes est effectué sur la base des contrats conclus entre les personnes physiques et morales conformément à la pratique internationale et aux lois et règlements de chaque pays.

2. À moins que les parties à une transaction particulière n'en décident autrement, toutes les transactions commerciales entre les personnes physiques et morales de la République de Corée et de la République du Bélarus s'effectuent en monnaies librement convertibles conformément à la législation et à la réglementation en vigueur dans chaque pays.

Article 5

Les personnes physiques et morales de chaque pays jouissent du traitement de la nation la plus favorisée en ce qui concerne la protection de leurs personnes et de leurs biens dans l'exercice de leurs activités commerciales sur le territoire de l'autre pays.

Article 6

1. Aucune des deux Parties contractantes n'impose de restriction au transfert hors de son territoire de monnaies librement convertibles acquises légalement en contrepartie d'échanges de biens et services effectués par des personnes physiques et morales de l'autre pays.

2. Sans déroger aux dispositions du paragraphe 1 relatives aux échanges de biens et de services, chaque Partie contractante accorde aux personnes morales et physiques de l'autre pays le traitement de la nation la plus favorisée en ce qui concerne :

a) l'ouverture et la tenue de comptes, en monnaie locale ou en devises étrangères, auprès d'institutions financières situées sur le territoire de l'autre pays, ainsi que l'accès aux fonds qui y sont déposés ;

b) les paiements, remises et transferts de monnaies librement convertibles, ou de leurs instruments financiers représentatifs, entre les territoires des deux pays ainsi qu'entre son territoire et le territoire d'un pays tiers;

c) les taux de change offerts par les institutions financières autorisées à effectuer des opérations de change, et les moyens autorisés d'obtenir des devises librement convertibles; et

d) l'acquisition et l'utilisation de monnaie locale.

Article 7

1. Les Parties contractantes encouragent les personnes physiques et morales des deux pays à rechercher les possibilités de développer leur commerce bilatéral et à coopérer sous différentes formes, y compris par l'échange d'informations.

2. Chacune des Parties contractantes encourage et facilite l'organisation d'évènements visant à promouvoir les échanges commerciaux, tels que des foires, expositions, visites et séminaires, sur son territoire et sur le territoire de l'autre pays. De même, les Parties contractantes encouragent et facilitent la participation des organisations, des individus et des sociétés concernés des deux pays à ces évènements.

Article 8

Conformément à la législation et à la réglementation en vigueur de chaque pays, les Parties contractantes exemptent de droits de douane, de taxes et d'autres redevances les biens suivants lors de leur importation ou de leur exportation :

a) les échantillons et matériaux publicitaires n'ayant pas de valeur commerciale;

b) les outils et articles importés à des fins d'assemblage ou de réparation, sous réserve qu'ils soient réexportés;

c) les marchandises importées aux fins de démonstration dans des foires et expositions, sous réserve qu'elles soient réexportées;

d) les outils et le matériel spécialisés non disponibles localement et servant à la construction d'usines ou d'autres structures industrielles qui sont importés par la personne physique ou morale effectuant lesdites constructions, sous réserve qu'ils soient réexportés; et

e) les conteneurs et emballages spécialisés du type utilisé dans le commerce international et destinés à être restitués.

Article 9

Conformément à la législation et à la réglementation en vigueur dans leur pays, les Parties contractantes facilitent le passage et le transit des marchandises qui :

a) proviennent du territoire de l'autre pays et sont destinées à un pays tiers; ou

b) proviennent d'un pays tiers et sont destinées à l'autre pays.

Article 10

1. Les Parties contractantes encouragent le règlement rapide et équitable, par arbitrage, des différends survenant entre les personnes physiques et morales de la République de Corée et de la République du Bélarus. Les dispositions relatives au règlement des différends par voie d'arbitrage ou d'autres voies, convenues par les parties à des transactions commerciales, peuvent être formulées dans des contrats ou accords conclus séparément.

2. L'arbitrage peut avoir lieu dans n'importe quel pays, d'un commun accord des parties au différend, qui est partie à la Convention des Nations Unies pour la reconnaissance et l'exécution des sentences arbitrales étrangères, dont les dispositions seront respectées par les deux pays.

3. Les Parties contractantes n'interdisent pas, et le présent Accord n'empêche pas, d'autres formes d'arbitrage ou de règlement des différends considérés mutuellement acceptables par les parties au différend.

4. Chaque Partie contractante veille à ce qu'un moyen efficace existe sur son territoire pour la reconnaissance et l'exécution des sentences arbitrales.

Article 11

1. Les dispositions du présent Accord ne portent pas atteinte au droit de chacune des Parties contractantes d'imposer des interdictions ou des restrictions à l'importation, à l'exportation et au transit de marchandises en vue de :

a) protéger la sécurité nationale;

b) protéger la santé publique ou prévenir les maladies et organismes nuisibles affectant les animaux ou les végétaux; ou

c) conserver les trésors nationaux ayant une valeur artistique, historique ou archéologique.

2. De telles interdictions ou restrictions ne constituent cependant pas un moyen de discrimination déraisonnable ni une entrave déguisée aux échanges entre les deux pays.

Article 12

Les personnes physiques et morales de chaque pays bénéficient d’un traitement national en ce qui concerne l'accès aux tribunaux et aux organismes administratifs sur le territoire de l'autre pays, en qualité de plaignants, de défendeurs ou à tout autre titre. Elles ne peuvent se prévaloir ou jouir de l'immunité de poursuites ou d'exécution d’un jugement, d’action relative à la reconnaissance et d'exécution des sentences arbitrales ou de toute obligation sur le territoire de l'autre pays en ce qui concerne les transactions commerciales. Elles ne peuvent non plus se prévaloir ou jouir de l'immunité fiscale en ce qui concerne les transactions commerciales, sauf dispositions contraires d'autres accords entre les Parties contractantes.

Article 13

Les représentants des deux Parties contractantes, à la demande de l'une ou l’autre d’entre elles, discutent, dans un esprit de coopération et de compréhension mutuelle, des mesures visant à développer les relations commerciales entre les deux pays ou du règlement des problèmes découlant de

l'application du présent Accord. Le lieu et la date de telles discussions sont fixés, si nécessaire, par consentement mutuel.

Article 14

Les différends survenant entre les Parties contractantes en ce qui concerne l'interprétation ou la mise en œuvre du présent Accord sont réglés à l'amiable par la voie diplomatique.

Article 15

1. Le présent Accord entre en vigueur à la date de la dernière notification par laquelle une Partie contractante notifie à l'autre que toutes les exigences légales nécessaires à cet effet.

2. Le présent Accord est conclu pour une période de cinq ans et prorogé de périodes successives de cinq ans, à moins que l'une ou l'autre Partie contractante ne notifie à l'autre par écrit, six mois à l'avance, son intention de le dénoncer.

3. Le présent Accord continue de s'appliquer après sa dénonciation à l'égard de toute transaction commerciale conclue lorsqu'il était en vigueur et dont les dispositions n'auraient pas été pleinement exécutées à la date de sa dénonciation.

EN FOI DE QUOI, les soussignés, à ce dûment autorisés par leurs Gouvernements respectifs, ont signé le présent Accord.

FAIT à Séoul, le 17 mai 2004, en double exemplaire, en langues coréenne, russe et anglaise, tous les textes faisant également foi. En cas de divergence d'interprétation, le texte anglais prévaut.

Pour le Gouvernement de la République de Corée :

LEE SOO-HYUCK

Pour le Gouvernement de la République de Bélarus :

VASILY P. POUGACHIOV

No. 49675

Netherlands (for the European part of the Netherlands) and United Kingdom of Great Britain and Northern Ireland (in respect of Bermuda)

Agreement between the Kingdom of the Netherlands and Bermuda (as authorized by the Government of the United Kingdom of Great Britain and Northern Ireland) on the avoidance of double taxation with respect to enterprises operating ships or aircraft in international traffic. London, 8 June 2009

Entry into force: *1 February 2010, in accordance with article 5*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *Netherlands, 12 July 2012*

Pays-Bas (pour la partie européenne des Pays-Bas) et Royaume-Uni de Grande-Bretagne et d'Irlande du Nord (à l'égard des Bermudes)

Accord entre le Royaume des Pays-Bas et les Bermudes (autorisées par le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord) tendant à éviter la double imposition des entreprises exploitant des navires ou des aéronefs en trafic international. Londres, 8 juin 2009

Entrée en vigueur : *1er février 2010, conformément à l'article 5*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *Pays-Bas, 12 juillet 2012*

[ENGLISH TEXT – TEXTE ANGLAIS]

Agreement between the Kingdom of the Netherlands and Bermuda (as authorized by the Government of the United Kingdom of Great Britain and Northern Ireland) on the avoidance of double taxation with respect to enterprises operating ships or aircraft in international traffic

The Government of the Kingdom of the Netherlands

and

the Government of Bermuda (as authorised by the Government of the United Kingdom of Great Britain and Northern Ireland),

Desiring to supplement the Agreement on the exchange of information with respect to taxes concluded today on the 8th day of June 2009, by concluding an Agreement on the avoidance of double taxation with respect to enterprises operating ships or aircraft in international traffic,

Have agreed as follows:

Article 1

Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:

a) the term "Bermuda" means the Islands of Bermuda including the territorial sea adjacent to those islands, in accordance with international law;

b) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

c) the term "competent authority" means:

(i) in the case of the Netherlands, the Minister of Finance or his authorised representative;

(ii) in the case of Bermuda, the Minister of Finance or an authorised representative of the Minister;

d) the term "Contracting Party" means the Netherlands or Bermuda, as the context requires; the term "Contracting Parties" means the Kingdom of the Netherlands and Bermuda;

e) the term "enterprise of a Contracting Party" means an enterprise, carried on by a resident of a Contracting Party;

f) the term "income derived from the operation of ships or aircraft in international traffic" includes revenues, gross receipts and profits derived from:

(i) such operation of ships or aircraft for the transport of passengers or cargo;

(ii) the rental on a charter basis of ships or aircraft where the rental is ancillary to the operation of ships or aircraft in international traffic;

(iii) the sale of tickets or similar documents and the provision of services connected with such transport, either for the enterprise itself or for any other enterprise, where such sale of tickets or similar documents or provision of services is directly connected with or ancillary to the operation of ships or aircraft in international traffic;

(iv) the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise, where the use, maintenance or rental is directly connected with or ancillary to the operation of ships or aircraft in international traffic;

(v) interest on funds deposited directly in connection with the operation of ships or aircraft in international traffic.

g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting Party, except when the ship or aircraft is operated solely between places in the other Contracting Party;

h) the term "the Netherlands" means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial seas, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights;

i) the term "person" includes an individual, a company and any other body of persons;

j) the term "resident of a Contracting Party" means any person, who under the law of that Party is liable to taxation therein by reason of his domicile, residence, place of effective management or any other criterion of a similar nature;

2. As regards the application of the Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 2

Avoidance of double taxation

1. An enterprise of a Contracting Party operating ships or aircraft in international traffic shall be exempted in the other Contracting Party from taxes of every kind and description on income derived therefrom, irrespective of the manner in which they are levied.

2. An enterprise of a Contracting Party operating ships or aircraft in international traffic shall be exempted in the other Contracting Party from taxes of every kind and description on gains derived from the alienation of ships or aircraft or movable property pertaining to the operation of such ships or aircraft, irrespective of the manner in which they are levied.

3. The provisions of paragraphs 1 and 2 shall also apply to income, profits and gains derived by an enterprise of a Contracting Party from the participation in a pool, a joint business or an international operating agency.

4. For the purpose of this Article the place of effective management of the existing Koninklijke Luchtvaartmaatschappij N.V. (KLM N.V.) shall be deemed to be situated in the Netherlands, as long as the Netherlands has an exclusive taxing right with respect to KLM N.V. under the tax convention concluded between the Kingdom of the Netherlands and the French Republic.

Article 3

Mutual agreement procedure

1. The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. Consultation requested by the competent authority of a Contracting Party shall begin within 90 days from the date of the receipt of such request.

2. The competent authorities of the Contracting Parties may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraph.

3. If any difficulty or doubt arising as to the interpretation or application of the Agreement cannot be resolved by the competent authorities of the Parties in a mutual agreement procedure pursuant to the previous paragraphs of this Article within a period of two years after the question was raised, the case may, at the request of either Party, be submitted for arbitration, but only after fully exhausting the procedures available under paragraphs 1 to 2 of this Article and provided the taxpayer or taxpayers involved agree in writing to be bound by the decision of the arbitration board.

The decision of the arbitration board in a particular case shall be binding on both Parties and the taxpayer or taxpayers involved with respect to that case.

Article 4

Territorial extension

1. This Agreement may be extended, either in its entirety or with any necessary modifications, to either or both of the countries of the Netherlands Antilles and Aruba, if the country concerned imposes taxes substantially similar in character to those to which the Agreement applies. Any such extension shall take effect from such date and shall be subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged through diplomatic channels.

2. Unless otherwise agreed the termination of the Agreement shall not also terminate any extension of the Agreement to any country to which it has been extended under this Article.

Article 5

Entry into force

1. This Agreement shall enter into force on the first day of the second month after the latter of which each of the Parties has notified the other in writing that the formalities constitutionally required in their respective Parties have been complied with.

2. Notwithstanding paragraph 1 of this Article, the Agreement shall only enter into force when the Agreement between the Kingdom of the Netherlands and Bermuda on the exchange of information with respect to taxes shall have effect for criminal as well as civil tax matters.

Article 6

Termination

1. This Agreement shall remain in force until terminated by one of the Contracting Parties. Either Party may terminate the Agreement by giving notice of termination in writing at least six months before the end of any calendar year after the expiration of a period of five years from the date of its entry into force. In such event, the Agreement shall cease to have effect for taxable years and periods beginning after the end of the calendar year in which the notice of termination has been given.

2. Notwithstanding paragraph 1 of this Article, this Agreement will be terminated, without giving notice of termination, on the date of termination of the Agreement between the Kingdom of the Netherlands and Bermuda on the exchange of information with respect to taxes.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement.

DONE at London this 8th day of June 2009, in duplicate, in the English language.

For the Kingdom of the Netherlands,

J. C. DE JAGER

For Bermuda,

PAULA A. COX

[TRANSLATION – TRADUCTION]

ACCORD ENTRE LE ROYAUME DES PAYS-BAS ET LES BERMUDES (AUTORISÉES PAR LE GOUVERNEMENT DU ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD) TENDANT À ÉVITER LA DOUBLE IMPOSITION DES ENTREPRISES EXPLOITANT DES NAVIRES OU DES AÉRONEFS EN TRAFIC INTERNATIONAL

Le Gouvernement du Royaume des Pays-Bas et le Gouvernement des Bermudes (autorisé par le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord),

Désireux de compléter l'Accord sur l'échange de renseignements en matière fiscale, signé le 8 juin 2009, en concluant un accord tendant à éviter la double imposition des entreprises exploitant des navires ou des aéronefs en trafic international,

Sont convenus de ce qui suit :

Article premier. Définitions

1. Aux fins du présent Accord, à moins que le contexte n'appelle une interprétation différente :

a) le terme « Bermudes » désigne les îles des Bermudes, y compris la mer territoriale adjacente à ces îles, conformément au droit international;

b) le terme « société » désigne toute personne morale ou toute entité considérée fiscalement comme une personne morale;

c) le terme « autorité compétente » désigne :

i) dans le cas des Pays-Bas, le Ministre des finances ou son représentant autorisé;

ii) dans le cas des Bermudes, le Ministre des finances ou son représentant autorisé;

d) le terme « Partie contractante » désigne les Pays-Bas ou les Bermudes, selon le contexte; le terme « Parties contractantes » désigne le Royaume des Pays-Bas et les Bermudes;

e) le terme « entreprise d'une Partie contractante » désigne une entreprise exploitée par un résident d'une Partie contractante;

f) le terme « revenus provenant de l'exploitation de navires ou d'aéronefs en trafic international » désigne les revenus, les recettes brutes et les bénéfices provenant de :

i) l'exploitation de navires ou d'aéronefs transportant des passagers ou des marchandises;

ii) l'affrètement de navires ou d'aéronefs accessoire à l'exploitation de navires ou d'aéronefs en trafic international;

iii) la vente de billets ou documents de même nature et la prestation de services connexes à ce type de transport, que ce soit pour le compte de l'entreprise elle-même ou de toute autre entreprise, lorsque la vente de billets ou documents de même nature, ou la prestation de services est directement liée ou accessoire à l'exploitation de navires ou d'aéronefs en trafic international;

iv) l'utilisation, la conservation ou la location de conteneurs (dont les remorques et l'équipement y relatif utilisés pour le transport de conteneurs) servant au transport de biens ou de marchandises, lorsque l'utilisation, la conservation ou la location est directement liée ou accessoire à l'exploitation de navires ou d'aéronefs en trafic international;

v) les intérêts sur les fonds directement perçus grâce à l'exploitation de navires ou d'aéronefs en trafic international.

g) le terme « trafic international » désigne tout transport effectué par un navire ou un aéronef exploité par une entreprise dont le siège de direction effective est situé sur le territoire d'une Partie contractante, sauf lorsque le navire ou l'aéronef n'est exploité qu'entre des points situés sur le territoire de l'autre Partie contractante;

h) le terme « Pays-Bas » désigne la partie du Royaume des Pays-Bas qui est située en Europe, y compris sa mer territoriale et toute zone au-delà de la mer territoriale sur laquelle, conformément au droit international, les Pays-Bas exercent leur juridiction ou des droits souverains;

i) le terme « personne » comprend les personnes physiques, les sociétés et tout autre groupement de personnes;

j) le terme « résident d'une Partie contractante » désigne toute personne qui, en vertu de la législation de la Partie concernée, est imposable dans cette Partie en raison de son domicile, de sa résidence, de son siège de direction effective ou de tout autre critère de nature analogue.

2. Aux fins de l'application de l'Accord à tout moment par une Partie contractante, tout terme qui n'y est pas défini a, sauf si le contexte exige une interprétation différente, le sens que lui attribue à ce moment la législation de cette Partie concernant les impôts visés par l'Accord, le sens attribué audit terme par la législation fiscale applicable de cette Partie prévalant sur le sens que lui attribuent les autres branches du droit de ladite Partie.

Article 2. Prévention de la double imposition

1. Une entreprise d'une Partie contractante qui exploite des navires ou des aéronefs en trafic international est exonérée, dans l'autre Partie contractante, de tout type d'impôts sur les revenus provenant de cette exploitation, quel que soit le système de perception.

2. Une entreprise d'une Partie contractante qui exploite des navires ou des aéronefs en trafic international est exonérée, dans l'autre Partie contractante, de tout type d'impôts sur les gains provenant de l'aliénation de navires ou d'aéronefs, ou de biens meubles affectés à l'exploitation de ces navires ou aéronefs, quel que soit le système de perception.

3. Les dispositions des paragraphes 1 et 2 s'appliquent également aux impôts sur les revenus, bénéfices et gains qu'une entreprise d'une Partie contractante tire de la participation à un pool, une exploitation en commun ou un organisme international d'exploitation.

4. Aux fins du présent article, le siège de direction effective de la société existante Koninklijke Luchtvaartmaatschappij N.V. (KLM N.V.) est réputé se situer aux Pays-Bas, aussi longtemps que les Pays-Bas disposent d'un droit d'imposition exclusif sur cette société conformément à la convention fiscale conclue entre le Royaume des Pays-Bas et la République française.

Article 3. Procédure amiable

1. Les autorités compétentes des Parties contractantes s'efforcent, par voie d'accord amiable, de résoudre les difficultés ou de dissiper les doutes auxquels peut donner lieu l'interprétation ou l'application de l'Accord. La procédure de consultation demandée par l'autorité compétente d'une Partie contractante est engagée dans les 90 jours suivant la date de réception de la demande à cet effet.

2. Les autorités compétentes des Parties contractantes peuvent communiquer directement entre elles en vue de parvenir à un accord au sens du paragraphe précédent.

3. Si une difficulté ou un doute découlant de l'interprétation ou de l'application de l'Accord ne peut être réglé par les autorités compétentes des Parties contractantes au moyen d'une procédure amiable menée conformément aux paragraphes précédents dans un délai de deux ans à compter de la date à laquelle la question a été soulevée, l'affaire peut être soumise à arbitrage, à la demande de l'une ou l'autre des Parties contractantes, mais seulement une fois que toutes les procédures disponibles en vertu des paragraphes 1 et 2 ont été épuisées et étant entendu que le ou les contribuables concernés acceptent par écrit d'être liés par la décision du conseil d'arbitrage.

La décision rendue par le conseil d'arbitrage dans une affaire donnée lie les deux Parties et le ou les contribuables concernés.

Article 4. Extension territoriale

1. Le présent Accord peut être étendu, dans son intégralité ou avec toute modification nécessaire, aux territoires des Antilles néerlandaises, d'Aruba ou des deux, si le territoire concerné impose une fiscalité sensiblement similaire par sa nature à celle visée par l'Accord. Toute extension territoriale prend effet à partir de la date, avec les modifications et dans les conditions, y compris en matière de dénonciation, qui sont précisées et convenues par échange de notes diplomatiques.

2. À moins que les Parties n'en conviennent autrement, la dénonciation de l'Accord ne met pas fin à son extension à tout territoire auquel il s'appliquait en vertu du présent article.

Article 5. Entrée en vigueur

1. Le présent Accord entre en vigueur le premier jour du deuxième mois suivant la dernière notification écrite par laquelle la deuxième Partie informe l'autre que les formalités internes nécessaires ont été accomplies.

2. Nonobstant le paragraphe 1, l'Accord n'entre en vigueur qu'une fois que l'Accord entre le Royaume des Pays-Bas et les Bermudes sur l'échange de renseignements en matière fiscale prend effet pour les affaires fiscales pénales et civiles.

Article 6. Dénonciation

1. Le présent Accord reste en vigueur tant qu'aucune Partie contractante ne le dénonce. L'une ou l'autre Partie peut le dénoncer moyennant un préavis écrit d'au moins six mois avant la fin de toute année civile suivant l'expiration d'une période de cinq ans à compter de sa date

d'entrée en vigueur. Dans ce cas, l'Accord cesse d'être applicable aux exercices fiscaux et aux périodes fiscales commençant après l'année civile où le préavis est donné.

2. Nonobstant le paragraphe 1, le présent Accord est dénoncé, sans préavis, le jour où il est mis fin à l'Accord entre le Royaume des Pays-Bas et les Bermudes sur l'échange de renseignements en matière fiscale.

EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet, ont signé le présent Accord.

FAIT à Londres, le 8 juin 2009, en deux exemplaires en langue anglaise.

Pour le Royaume des Pays-Bas :

J. C. DE JAGER

Pour les Bermudes :

PAULA A. COX

No. 49676

Spain
and
Andorra

Agreement between the Kingdom of Spain and the Principality of Andorra on waste transfer. Madrid, 29 November 2011

Entry into force: *13 June 2012 by notification, in accordance with article 9*

Authentic texts: *Catalan and Spanish*

Registration with the Secretariat of the United Nations: *Spain, 19 July 2012*

Not published in print, in accordance with article 12(2) of the General Assembly regulations to give effect to Article 102 of the Charter of the United Nations, as amended.

Espagne
et
Andorre

Accord entre le Royaume d'Espagne et la Principauté d'Andorre sur le transfert de déchets. Madrid, 29 novembre 2011

Entrée en vigueur : *13 juin 2012 par notification, conformément à l'article 9*

Textes authentiques : *catalan et espagnol*

Enregistrement auprès du Secrétariat des Nations Unies : *Espagne, 19 juillet 2012*

Non disponible en version imprimée, conformément au paragraphe 2 de l'article 12 du règlement de l'Assemblée générale destiné à mettre en application l'Article 102 de la Charte des Nations Unies, tel qu'amendé.

No. 49677

Republic of Korea
and
Mongolia

Arrangement concerning the dispatch of Korean medical personnel in the field of oriental medicine between the Government of the Republic of Korea and the Government of Mongolia. Ulaanbaatar, 27 December 2002

Entry into force: *27 December 2002 by signature, in accordance with article 14*

Authentic texts: *English, Korean and Mongol*

Registration with the Secretariat of the United Nations: *Republic of Korea, 6 July 2012*

République de Corée
et
Mongolie

Arrangement relatif à l'envoi de personnel médical coréen dans le domaine de la médecine orientale entre le Gouvernement de la République de Corée et le Gouvernement de la Mongolie. Oulan-Bator, 27 décembre 2002

Entrée en vigueur : *27 décembre 2002 par signature, conformément à l'article 14*

Textes authentiques : *anglais, coréen et mongol*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 6 juillet 2012*

[ENGLISH TEXT – TEXTE ANGLAIS]

ARRANGEMENT CONCERNING THE DISPATCH OF KOREAN MEDICAL PERSONNEL IN THE FIELD OF ORIENTAL MEDICINE BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF MONGOLIA

The Government of the Republic of Korea and the Government of Mongolia,

Desiring to further strengthen cooperation in the field of oriental medicine on the occasion of the establishment of the Korea-Mongolia Friendship Oriental Medical Center at the Orgil Center of Balneology,

Pursuant to Article 2 of the Agreement on Economic, Scientific and Technical Cooperation between the Government of the Republic of Korea and the Government of Mongolia signed on March 28, 1991, and

Taking note of Article 1 of the Arrangement on Technical Cooperation between the Government of the Republic of Korea and the Government of Mongolia signed on November 8, 1999,

Have agreed as follows:

ARTICLE 1

The implementing Agencies shall be:

(a) for the Government of the Republic of Korea, the Korea International Cooperation Agency (hereinafter referred to as "KOICA"); and

(b) for the Government of Mongolia, the Ministry of Health of Mongolia.

ARTICLE 2

KOICA shall dispatch Korean medical personnel under its responsibility to Mongolia to carry out curative, preventive and promotive medical work.

ARTICLE 3

The Government of Mongolia shall, after consultation with KOICA, designate the hospitals in which the Korean medical personnel shall carry out their duties set out in Article 2 (hereinafter referred to as "Working Hospital") and shall authorize the medical practice of the Korean medical personnel upon the presentation of medical licences issued by the Government of the Republic of Korea.

ARTICLE 4

KOICA shall, subject to budgetary limitations, bear the traveling costs of the Korean medical personnel and their families when traveling to Mongolia to carry out their duties and when returning to Korea after completing their duties and shall pay salaries to the Korean medical personnel during their duties in Mongolia.

ARTICLE 5

KOICA, after consultation with the Ministry of Health of Mongolia, shall provide Korean medical personnel with Korean herbal medicine for their medical duties.

ARTICLE 6

The Government of Mongolia shall accord to the Korean medical personnel and their families the following exemptions and benefits:

(a) exemption from all customs duties, taxes and other related charges on the medical equipment, supplies and Korean herbal medicine brought into Mongolia for their medical duties;
(b) exemption from all customs duties, taxes and other related charges on personal effects imported within six (6) months of the arrival of the medical personnel and their families in Mongolia, excluding items which are not compatible with his or her duties or cannot be imported under Mongolian laws and regulations, provided that such items may be exported on completion of their duties or be sold after the appropriate duty is paid;
(c) exemption from income tax and other governmental charges in Mongolia on salaries paid by KOICA;
(d) exemption from visa and immigration-related fees;
(e) free medical treatment during their service in Mongolia.

ARTICLE 7

1. The Working Hospital shall protect the Korean medical personnel from any claim arising from any act or omission occurring while carrying out their official duties and shall assume responsibility therefor, except where such an act or omission is committed with deliberate intent or gross negligence on the part of the Korean medical personnel.

2. In the event of a dispute on deliberate intent or gross negligence on the part of the Korean medical personnel, KOICA and the Ministry of Health of Mongolia shall endeavor to resolve the dispute through consultations according to the provision of Article 13.

ARTICLE 8

The Government of Mongolia shall, as circumstances permit, provide the Korean medical personnel with the following:
(a) appropriate medicine, medical equipment and medical supplies;
(b) medical support staff and other assistance as may be necessary for the performance of their duties.

ARTICLE 9

KOICA shall provide each of the Korean medical personnel with suitable accommodation with water, electricity, furniture and telephone. The Government of Mongolia shall cooperate with KOICA in finding such suitable accommodation as soon as possible after the arrival of the Korean medical personnel in Mongolia.

ARTICLE 10

The Government of Mongolia shall, as circumstances permit, bear the expenses incurred by the Korean medical personnel while traveling on official duties in Mongolia.

ARTICLE 11

The Government of Mongolia shall ensure that the Korean medical personnel and their families are treated in a manner no less favorable than technical assistance personnel dispatched to Mongolia by other countries.

ARTICLE 12

The Korean medical personnel and their families shall abide by Mongolian laws and respect its custom.

ARTICLE 13

Matters which are not covered by this Arrangement and which may arise in its implementation shall be settled amicably through consultations between KOICA and the Ministry of Health of Mongolia.

ARTICLE 14

This Arrangement shall enter into force on the date of signature and shall remain effective thereafter indefinitely unless either Party notifies the other, in writing, six (6) months in advance, of its intention to terminate it.

Done in duplicate at Ulaanbaatar on this 27th day of December, 2002, in the Korean, Mongolian 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

김 원 태

FOR THE GOVERNMENT OF MONGOLIA

[KOREAN TEXT – TEXTE CORÉEN]

대한민국 정부와 몽골 정부간의 한의학 분야에서의 대한민국 의료요원 파견에 관한 약정

대한민국 정부와 몽골 정부는,

오르길 광천학센타내에 한·몽골 친선한방의료원 설립에 즈음하여 한의학 분야에서의 협력을 더욱 강화하기를 희망하여,

1991년 3월 28일 서명된 대한민국 정부와 몽골 정부간의 경제·과학·기술 협력에 관한 협정 제2조에 따라, 그리고

1999년 11월 8일 서명된 대한민국 정부와 몽골 정부간의 기술협력약정 제1조에 주목하여,

다음과 같이 합의하였다.

제 1 조

이행기관은,
가. 대한민국 정부의 경우에는 한국국제협력단(이하 "KOICA"라 한다)이며,
나. 몽골 정부의 경우에는 몽골보건부이다.

제 2 조

KOICA는 치료, 예방 및 삶의 질을 향상시키는 의료업무를 수행하기 위하여 그 책임하에 한국의료요원을 몽골에 파견한다.

제 3 조

몽골 정부는, KOICA와 협의한 후에, 한국의료요원이 제2조에 규정된 업무를 수행하는 의료기관(이하 "소속병원"이라 한다)을 지정하며, 대한민국 정부가 발급한 의료면허증을 제시하는 때에 한국의료요원의 의료행위를 인가한다.

제 4 조

KOICA는, 예산이 허용하는 범위내에서 한국의료요원 및 그 가족이 의료업무를 수행하기 위하여 몽골에 부임할 때와 의료업무를 종료하고 한국으로 귀임할 때에 발생하는 여행경비를 부담하며, 몽골에서의 의료업무 수행기간 동안 한국의료요원에게 보수를 지급한다.

제 5 조

KOICA는, 몽골보건부와 협의한 후에, 의료업무에 필요한 한의학 재료를 한국의료요원에게 제공한다.

제 6 조

몽골 정부는 한국의료요원과 그 가족에게 다음과 같은 면제와 혜택을 부여한다.

가. 의료업무를 위하여 몽골로 반입되는 의료장비, 의료물품 및 한의학재료에 대한 모든 관세, 세금 및 그 밖의 관련 부과금의 면제

나. 한국의료요원 및 그 가족이 몽골에 도착한 후 6개월 이내에 반입하는 개인물품에 대하여는 의료업무 종료 후 반출하거나 적절한 관세가 지불된 후 판매하는 조건으로 모든 관세, 세금 및 그 밖의 관련 부과금 면제. 다만, 한국의료요원의 의료업무와 관련이 없거나 몽골의 법령에 의하여 반입이 금지된 물품은 제외된다.

다. KOICA로부터 받는 보수에 대하여 몽골의 소득세 및 그 밖의 정부 부과금의 면제

라. 사증 및 입국관련 비용 면제

마. 몽골에서의 의료업무 기간동안 무료의 치료 제공

제 7 조

1. 소속병원은 한국의료요원의 고의 또는 중대한 과실로 인한 작위 또는 부작위의 경우를 제외하고는 그들의 공적 의료업무 수행중에 발생하는 작위 또는 부작위로 인하여 제기되는 모든 배상청구로부터 한국의료요원을 보호하고 그러한 배상청구에 대하여 책임을 진다.

2. 한국의료요원의 고의 또는 중대한 과실에 관하여 분쟁이 있는 경우에는, KOICA와 몽골보건부는 그러한 분쟁을 제13조에 따라 협의를 통하여 해결하기 위하여 노력한다.

제 8 조

몽골 정부는, 여건이 허락하는 경우, 한국의료요원에게 다음을 제공한다

가. 적절한 의약품, 의료장비 및 의료물품

나. 한국의료요원의 의료업무 수행에 필요한 경우 의료보조인력 및 그 밖의 지원

제 9 조

KOICA는 한국의료요원 각자에게 수도, 전기, 가구 및 전화기가 구비된 적절한 주거시설을 제공한다. 몽골 정부는 한국의료요원이 몽골에 도착한 후 가능한 한 조속히 그러한 적절한 주거시설을 찾을 수 있도록 KOICA와 협력한다.

제 10 조

몽골 정부는, 여건이 허락하는 경우, 한국의료요원이 공적인 의료업무를 수행하기 위하여 몽골에서 여행하는 동안 발생하는 경비를 부담한다.

제 11 조

몽골 정부는 한국의료요원과 그 가족에 대하여 다른 국가가 몽골에 파견한 기술지원요원에게 부여하는 것보다 불리하지 아니한 대우를 부여할 것을 보장한다.

제 12 조

한국의료요원과 그 가족은 몽골의 법을 준수하고 몽골의 관습을 존중한다.

제 13 조

이 약정에 의하여 다루어지지 아니한 문제와 이 약정의 이행중에 발생하는 문제는 KOICA와 몽골보건부간에 협의를 통하여 우호적으로 해결한다.

제 14 조

이 약정은 서명일에 발효하며, 일방당사자가 타방당사자에게 이 약정의 종료 의사를 6개월 전에 서면으로 통보하지 아니하는 한 그 후에도 계속 유효하다.

2002년 12월 27 일 울란바타르에서 동등하게 정본인 한국어, 몽골어 및 영어로 각2부를 작성하였다. 해석상의 차이가 있는 경우에는 영어본이 우선한다.

대한민국 정부를 대표하여

김 원 태

몽골 정부를 대표하여

[MONGOL TEXT – TEXTE MONGOL]

Бүгд Найрамдах Солонгос Улсын Засгийн газар, Монгол Улсын Засгийн газар хооронд дорнын уламжлалт анагаах ухааны чиглэлээр эмч, эмнэлгийн мэргэжилтэн томилон ирүүлэх тухай хэлэлцээр

Бүгд Найрамдах Солонгос Улсын Засгийн газар, Монгол Улсын Засгийн газар нь

"Оргил" рашаан сувиллыг түшиглүүлж Солонгос-Монголын хамтарсан Дорнын анагаах ухааны төв байгуулагдсантай холбогдуулан уламжлалт анагаах ухааны салбарын хамтын ажиллагааг хөгжүүлэхийг эрмэлзэн,

1991 оны 3 дугаар сарын 28-ны өдрийн Эдийн засаг, шинжлэх ухаан, техникийн талаар хамтран ажиллах тухай Монгол Улсын Засгийн газар, БНСУ-ын Засгийн газар хоорондын хэлэлцээрийн 2 дугаар зүйлд үндэслэн,

1999 оны 11 дүгээр сарын 8-ны өдрийн Монгол Улсын Засгийн газар, Бүгд Найрамдах Солонгос Улсын Засгийн газар хоорондын Техникийн хамтын ажиллагааны хэлэлцээрийн 1 дүгээр зүйлийн хүрээнд,

дараах зүйлээр харилцан тохиров.

1 дүгээр зүйл

Хэрэгжүүлэгч байгууллага нь:

(а) БНСУ-ын Засгийн газрыг төлөөлж БНСУ-ын Олон улсын Хамтын ажиллагааны байгууллага /цаашид СОУХАБ гэнэ/

(б) Монгол Улсын Засгийн газрыг төлөөлж Эрүүл мэндийн яам байна.

2 дугаар зүйл

СОУХАБ нь өөрийн үүрэг хариуцлагын хүрээнд эмчлэх, сэргийлэх, эрүүл мэндийг дэмжих үйл ажиллагаа явуулах Солонгосын эмч, эмнэлгийн мэргэжилтнийг Монгол Улсад илгээнэ.

3 дугаар зүйл

Монгол Улсын Засгийн газар нь Хэлэлцээрийн 2 дугаар зүйлд заасны дагуу БНСУ-ын эмч, эмнэлгийн мэргэжилтний үйл ажиллагаагаа хэрэгжүүлэх эмнэлгийг /цаашид "Ажиллаж буй

эмнэлэг" гэнэ/ СОУХАБ-тай харилцан тохиролцсоны үндсэн дээр тодорхойлж, БНСУ-ын Засгийн газраас олгосон эмнэлгийн үйл ажиллагаа явуулах лицензэд үндэслэн Солонгосын эмч, эмнэлгийн мэргэжилтэнд эмнэлгийн үйл ажиллагаа явуулах эрх олгоно.

4 дүгээр зүйл

СОУХАБ нь төсвийн хязгаарлалтаас хамааран Солонгосын эмч, эмнэлгийн мэргэжилтэн болон тэдний гэр бүлийн Монгол Улсад ирэх, буцах замын зардлыг хариуцах ба Солонгосын эмч, эмнэлгийн ажилтанд Монгол Улсад эмнэлгийн үйл ажиллагаа явуулах үеийн цалинг олгоно.

5 дугаар зүйл.

СОУХАБ нь Монгол Улсын Эрүүл мэндийн яамтай зөвшилцсөний үндсэн дээр Солонгосын эмч, эмнэлгийн мэргэжилтнийг Солонгосын уламжлалт анагаахын эмээр хангана.

6 дугаар зүйл

Монгол Улсын Засгийн газар нь Солонгосын эмч, эмнэлгийн мэргэжилтэн, тэдний гэр бүлд дараах хөнгөлөлт үзүүлнэ.

а/ Монгол Улсад эмнэлгийн үйл ажиллагаа гүйцэтгэх зорилгоор оруулж байгаа ардын эм, эмнэлгийн тоног төхөөрөмж, хэрэгцээтэй материалыг гаалийн татвар, түүнтэй холбогдсон бусад төлбөр, хураамжаас чөлөөлөх,

б/ Монгол Улсад томилогдож ирснээс хойш 6 сарын дотор эмч мэргэжилтэн, тэдний гэр бүлийнхэний Монгол улсад оруулахыг хориглосон буюу албан ажлын үүрэг зорилготой холбоогүй эд зүйлсээс бусад хувийн хэрэгцээний эд зүйлсийг гаалийн татвар, нэмүү өртгийн татвар болон бусад татвар, хураамжаас чөлөөлөх,

в/ СОУХАБ -аас олгосон цалин хөлсийг орлогын татвар, бусад татвар хураамжаас чөлөөлөх,

г/ Виз, цагаачлалтай холбоотой хураамжаас чөлөөлөх,

д/ Монгол Улсад үйл ажиллагаа явуулж буй үед нь эмнэлгийн тусламж үнэ төлбөргүй үзүүлэх,

7 дугаар зүйл.

1. Ажиллаж буй эмнэлэг нь Солонгосын эмч, мэргэжилтний эмнэлгийн үйл ажиллагаа явуулж байх үедээ санаатай үйлдсэн буюу хайхрамжгүй байдлаас үүссэн алдаа, үйл ажиллагаанаас бусад тохиолдолд аливаа гомдлоос хамгаална.

2. Солонгосын эмч, мэргэжилтний санаатай буюу хайхрамжгүй байдлаас үүссэн алдаа, үйл ажиллагаатай холбоотой маргаантай асуудлыг СОУХАБ, Эрүүл мэндийн яам нь Хэлэлцээрийн 13 дугаар зүйлийн дагуу шийдвэрлэнэ.

8 дугаар зүйл.

Монгол Улсын Засгийн газар нь Солонгосын эмч, эмнэлгийн мэргэжилтнийг боломжтой бол дараах зүйлээр хангана.

(а) зохих эм, эмнэлгийн багаж, тоног төхөөрөмж

(б) ажил үүргээ гүйцэтгэхэд нь шаардлагатай туслах ажилтан болон бусад зүйлс

9 дүгээр зүйл

СОУХАБ нь Солонгосын эмч, эмнэлгийн мэргэжилтнийг ус, цахилгаан, тавилга, телефон утас бүхий тохиромжтой орон сууцаар хангана. Монгол Улсын Засгийн газар нь Солонгосын эмч, эмнэлгийн мэргэжилтнийг Монгол Улсад томилогдон ирмэгц тохиромжтой орон сууц олоход нь СОУХАБ -т туслалцаа үзүүлнэ.

10 дугаар зүйл.

Монгол Улсын Засгийн газар нь боломжтой бол Солонгосын эмч, эмнэлгийн ажилтны орон нутагт албан томилолтоор ажиллахтай холбогдсон зардлыг хариуцна.

11 дүгээр зүйл

Монгол Улсын Засгийн газар нь Солонгосын эмч, эмнэлгийн ажилтан, тэдний гэр бүлийнхэнд Монгол Улсад бусад орноос томилогдон ажиллаж буй мэргэжилтнүүдэд үзүүлдэг техникийн туслалцааны нөхцөлөөс дутуугүй таатай нөхцөл олгоно.

12 дугаар зүйл

Солонгосын эмч, эмнэлгийн ажилтан, тэдний гэр бүл Монгол Улсын хууль тогтоомжийг хүндэтгэн дагаж мөрдөнө.

13 дугаар зүйл

Хэлэлцээрийг хэрэгжүүлэх явцад хэлэлцээрт тусгагдаагүй асуудал гарвал Монгол улсын Эрүүл мэндийн яам, СОУХАБ харилцан зөвшилцөж шийдвэрлэнэ.

14 дүгээр зүйл

Хэлэлцээр нь гарын үсэг зурсан өдрөөс эхлэн хүчин төгөлдөр болох бөгөөд аль нэг тал нь Хэлэлцээрийг цуцлах тухайгаа нөгөө талд бичгээр мэдэгдсэнээс хойш 6 сарын хугацаанд хүчин төгөлдөр байна.

2002 оны 12 сарын 27-ний өдөр Улаанбаатар хотноо солонгос, монгол, англи хэлээр үйлдсэн бөгөөд эх бичвэрүүд адил хүчинтэй. Тайлбарлахад зөрөө гарвал англи хэл дээрх эхийг баримтална.

БНСУ-ын Засгийн газрыг төлөөлж

Монгол Улсын Засгийн газрыг төлөөлж:

[TRANSLATION – TRADUCTION]

ARRANGEMENT RELATIF À L'ENVOI DE PERSONNEL MÉDICAL CORÉEN DANS LE DOMAINE DE LA MÉDECINE ORIENTALE ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE DE CORÉE ET LE GOUVERNEMENT DE LA MONGOLIE

Le Gouvernement de la République de Corée et le Gouvernement de la Mongolie,

Désireux de resserrer la coopération dans le domaine de la médecine orientale, à l'occasion de la création du Centre de médecine orientale Corée-Mongolie (« Korea-Mongolia Friendship Oriental Medical Center ») au Centre de balnéothérapie d'Orgil,

Conformément à l'article 2 de l'Accord de coopération économique, scientifique et technique entre le Gouvernement de la République de Corée et le Gouvernement de la Mongolie, signé le 28 mars 1991, et

Prenant note de l'article premier de l'Arrangement de coopération technique entre le Gouvernement de la République de Corée et le Gouvernement de la Mongolie, signé le 8 novembre 1999,

Sont convenus de ce qui suit :

Article premier

Les agences d'exécution sont les suivantes :

a) pour le Gouvernement de la République de Corée, l'Agence coréenne de coopération internationale (ci-après dénommée « KOICA ») ; et

b) pour le Gouvernement de la Mongolie, le Ministère de la santé.

Article 2

La KOICA envoie, sous sa responsabilité, du personnel médical coréen en Mongolie pour qu'il s'acquitte de tâches dans les domaines du traitement, de la prévention et de la promotion de la santé.

Article 3

Le Gouvernement de la Mongolie, après consultation avec la KOICA, désigne les hôpitaux dans lesquels le personnel médical coréen s'acquitte des fonctions visées à l'article 2 (ci-après « hôpitaux de travail ») et autorise la pratique de la médecine par le personnel médical coréen sur présentation du permis d'exercice de la médecine délivré par le Gouvernement de la République de Corée.

Article 4

La KOICA, sous réserve des restrictions budgétaires, prend en charge les frais de voyage des membres du personnel médical coréen et de leur famille pour leur départ en mission en Mongolie et pour leur retour de mission en Corée, et leur verse un salaire pendant la durée de leur affectation en Mongolie.

Article 5

La KOICA, après consultation avec le Ministère de la santé de la Mongolie, met à la disposition du personnel médical coréen des plantes médicinales coréennes pour qu'il puisse s'acquitter de ses fonctions.

Article 6

Le Gouvernement de la Mongolie accorde aux membres du personnel médical coréen et à leur famille les exonérations et avantages suivants :

a) exonération de tout droit de douane, toute taxe et autre frais connexe sur l'équipement médical, les fournitures et les médicaments à base de plantes d'origine coréenne introduits en Mongolie pour leurs tâches médicales;

b) exonération de tout droit de douane, toute taxe et autre charge connexe sur les effets personnels importés dans les six mois à compter de la date d'arrivée des membres du personnel médical et de leur famille en Mongolie, à l'exclusion des articles qui ne sont pas compatibles avec leurs fonctions ou qui ne peuvent être importés en vertu des dispositions législatives ou réglementaires en vigueur en Mongolie, à condition que ces articles puissent être exportés à la fin de leur mission ou être vendus après paiement des droits applicables;

c) exonération de l'impôt sur le revenu et d'autres taxes gouvernementales de la Mongolie sur les salaires versés par la KOICA;

d) exonération des frais de délivrance de visa et frais liés à l'immigration;

e) soins médicaux gratuits pendant la durée de leur affectation en Mongolie.

Article 7

1. Les hôpitaux de travail protègent le personnel médical coréen contre toute réclamation résultant d'un acte ou d'une omission dans l'accomplissement de leurs fonctions officielles et en assume la responsabilité, sauf si cet acte est commis délibérément ou résulte d'une négligence grave de la part du personnel médical coréen.

2. En cas de différend sur un acte délibéré ou une négligence grave du personnel médical coréen, la KOICA et le Ministère de la santé de la Mongolie s'efforcent de parvenir à un règlement par voie de consultations, conformément aux dispositions de l'article 13.

Article 8

Le Gouvernement de la Mongolie met à la disposition du personnel médical coréen, si les circonstances le permettent, les moyens suivants :

a) les médicaments, l'équipement médical et les fournitures médicales adéquats;

b) les services d'auxiliaires médicaux et toute autre assistance pouvant s'avérer nécessaire pour l'accomplissement de ses fonctions.

Article 9

La KOICA met à la disposition de chaque membre du personnel médical coréen un logement meublé convenable avec eau, électricité et téléphone. Le Gouvernement de la Mongolie coopère avec elle pour trouver un tel logement dès que possible après l'arrivée du personnel médical coréen en Mongolie.

Article 10

Le Gouvernement de la Mongolie prend en charge, si les circonstances le permettent, les frais encourus par le personnel médical coréen lors de ses déplacements en mission officielle en Mongolie.

Article 11

Le Gouvernement de la Mongolie veille à ce que les membres du personnel médical coréen et leur famille bénéficient d'un traitement qui n'est pas moins favorable que celui accordé au personnel d'assistance technique affecté en Mongolie par d'autres pays.

Article 12

Les membres du personnel médical coréen et leur famille se conforment aux lois de la Mongolie et en respectent la coutume.

Article 13

Les questions qui ne sont pas couvertes par le présent Arrangement et pourraient se poser lors de sa mise en œuvre sont réglées à l'amiable, par voie de consultations entre la KOICA et le Ministère de la santé de la Mongolie.

Article 14

Le présent Arrangement entre en vigueur à la date de sa signature et demeure en vigueur pour une durée indéfinie, à moins que l'une des Parties notifie à l'autre par écrit, six mois à l'avance, son intention d'y mettre fin.

FAIT à Oulan-Bator le 27 décembre 2002, en double exemplaire, en langues coréenne, mongole et anglaise, tous les textes faisant également foi. En cas de divergence d'interprétation, le texte anglais prévaut.

Pour le Gouvernement de la République de Corée :

KIM WON-TAE

Pour le Gouvernement de la Mongolie :

P. NYAMDAVAA

No. 49678

Republic of Korea
and
Mauritania

Agreement between the Government of the Republic of Korea and the Government of the Islamic Republic of Mauritania for the promotion and protection of investments. Nouakchott, 15 December 2004

Entry into force: *21 July 2006, in accordance with article 12*

Authentic texts: *Arabic, English, French and Korean*

Registration with the Secretariat of the United Nations: *Republic of Korea, 6 July 2012*

République de Corée
et
Mauritanie

Accord entre le Gouvernement de la République de Corée et le Gouvernement de la République islamique de Mauritanie pour la promotion et la protection des investissements. Nouakchott, 15 décembre 2004

Entrée en vigueur : *21 juillet 2006, conformément à l'article 12*

Textes authentiques : *arabe, anglais, français et coréen*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 6 juillet 2012*

وبناء عليه فإن الموقعين المخولين من قبل حكومة كل منهما قد أمضيا هذه الاتفاقية.

حرر في نواكشوط بتاريخ 04/12/15 في نسختين باللغات الكورية والعربية والفرنسية والإنجليزية وجميع النصوص أصلية. وفي حالة نزاع يتعلق بالتفسير يتم الرجوع إلى النسخة الإنجليزية.

عن حكومة جمهورية كوريا

سعادة السيد جايسون بارك

والتنمية وزير الشؤون الاقتصادية

عن حكومة الجمهورية الإسلامية الموريتانية

سيدى ولد ذيدي

سفير فوق العادة وكامل السلطة
لجمهورية كوريا

2- إذا كانت المعاملة الممنوحة من أحد الأطراف المتعاقدة لمستثمري الطرف الآخر وفقا لقوانينه أو نظمه أو أية أحكام أخرى أو تعاقد أفضل من تلك التي تمنحها هذه الاتفاقية، فإن المعاملة الأفضل هي التي تسري.

3- يتقيد كل من الأطراف المتعاقدة بأي التزام يقطعه بخصوص استثمار معين ينجز في إقليمه من طرف مستثمري الطرف المتعاقد الآخر.

المادة 11 : تطبيق الاتفاقية

تطبق هذه الاتفاقية على جميع الاستثمارات بما فيها تلك التي أنجزت قبل دخولها حيز التنفيذ، غير أن هذه الاتفاقية لا تطبق على النزاعات المتعلقة بالاستثمارات والتي حدثت قبل سريانها.

المادة 12 : السريان – المدة وانتهاء الصلاحية

1- يبلغ كل من الطرفين المتعاقدين الطرف الآخر باكتمال الإجراءات المطلوبة قانونيا لسريان هذه الاتفاقية، وتدخل هذه الأخيرة حيز التنفيذ بعد 30 يوما من استلام آخر تبليغ.

2- تظل الاتفاقية صالحة لمدة 10 سنوات. وستبقى صالحة بعد ذلك طالما أن أحد الأطراف المتعاقدة لم يبلغ الطرف الآخر كتابيا بنيته بفسخ الاتفاقية بسنة واحدة مسبقا.

3- بالنسبة للاستثمارات المنجزة قبل انتهاء صلاحية هذه الاتفاقية، تبقى المواد من 1 إلى 11 من هذه الاتفاقية سارية لمدة تكميلية قدرها 10 سنوات، اعتبارا من انتهاء الصلاحية.

4- يمكن مراجعة هذه الاتفاقية بموافقة الأطراف المتعاقدة.

المادة 9 : النزاع بين الأطراف المتعاقدة

1- يسوى أي نزاع بين الأطراف المتعاقدة حول تفسير أو تنفيذ هذه الاتفاقية كلما أمكن ذلك بالطرق الدبلوماسية.

2- إذا تعذرت تسوية النزاع بهذه الطريقة في ظرف 6 أشهر، فإنه يحال بطلب أحد الأطراف المتعاقدة إلى هيئة تحكيم مختصة، وفقا لأحكام هذه المادة.

3- تتشكل هيئة التحكيم (المسماة أدناه المحكمة) بالنسبة لكل حالة على النحو التالي: في أجل 3 أشهر من استلام طلب التحكيم، يعين كل من الأطراف المتعاقدة حكما ويعين الحكم الثالث الذي سيتولى رئاسة المحكمة ويكون من رعايا دولة ثالثة باتفاق الأطراف المتعاقدة. وسيعين الرئيس في ظرف ثلاثة (3) أشهر، بعد تعيين العضوين الآخرين.

4- إذا لم تتشكل المحكمة في الآجال المحددة في الفقرة 3 من هذه المادة يجوز لكل طرف متعاقد في غياب اتفاق، دعوة رئيس المحكمة الدولية للعدل إلى القيام بتعيين الحكام. إذا كان رئيس المحكمة من رعايا أحد الطرفين المتعاقدين أو منع لأي سبب كان من أداء هذه المهمة، فإن نائب الرئيس يدعى لأدائها، وإذا كان نائب الرئيس من رعايا أحد الطرفين المتعاقدين أو لم يستطع أداء المهمة المذكورة فإن عضو محكمة العدل الذي يليه مباشرة في الترتيب من غير رعايا أحد الطرفين هو الذي سيدعى لإجراء التعيينات اللازمة.

5- تتخذ المحكمة قراراتها على أساس أحكام هذه الاتفاقية والاتفاقيات الأخرى المعمول بها وفقا لمبادئ القانون الدولي.

6- تحدد المحكمة الإجراءات الخاصة. وتبت بأغلبية الأصوات بطلب من أحد الأطراف المتعاقدة، ويكون قرارها نهائيا وملزما للأطراف.

7- يتحمل كل طرف متعاقد التكاليف المترتبة على حكَمِه وممثله. أما تكاليف الرئيس والنفقات الأخرى فسيتحملها الطرفان بالتساوي.

لمادة 10 : تطبيق القواعد الأخرى

1- إذا كان موضوع معين يخضع لأحكام هذه الاتفاقية أو أية اتفاقية أخرى ينتمي إليها الطرفان، فإن أي شيء في هذه الاتفاقية لن يمنع أيا من الأطراف المتعاقدة أو مستثمريه من المطالبة بتطبيق الأحكام الأفضل.

لمادة 7 : مبدأ الحلول

1-إذا قام أحد الأطراف المتعاقدة أو هيئة تمثله بسداد على أساس تعويض استثمار أنجز في إقليم الطرف المتعاقد الآخر، فإنه على هذا الأخير أن يعترف:

أ) بالتنازل لصالح الطرف المتعاقد الأول أو الهيئة التي تنوب عنه بموجب تشريع أو تعاقد عن جميع حقوق ومستحقات الطرف المعوض؛

ب)حق الطرف الأول أو الهيئة التي تنوب عنه في ممارسة حقوقه وأن يطالب بالمستحقات وفقا لمبدإ الحلول شأنه شأن المستثمر.

2-لن تتجاوز الحقوق والمطالب بموجب الحلول الحقوق والمطالب الأصلية للمستثمر.

لمادة 8 : النزاعات المتعلقة بالاستثمار

1- يسوى كل نزاع بين أحد الأطراف المتعاقدة وبين أحد مستثمري الطرف الآخر فيما يتعلق بالاستثمار بالتراضي كلما كان ذلك ممكنا عن طريق التشاور بين أطراف النزاع.

2- إذا لم يسو النزاع عن طريق التفاوض في ظرف ستة (6) أشهر فإن المستثمر بإمكانه أن يتقدم بدعوى قضائية لدى:

أ) محكمة مختصة لدى الطرف المتعاقد الذي استقبل الاستثمار؛

ب)تحكيم دولي في المركز الدولي لتسوية النزاعات المتعلقة بالاستثمارات الذي أنشئ وفقا لاتفاقيات حل النزاعات المتعلقة بالاستثمارات بين دولة ورعايا الدول الأخرى والموقعة في واشنطن بتاريخ 18 مارس 1965.

3- ستكون التسوية التي تنص عليها قوانين ونظم الطرف المتعاقد الذي يستقبل الاستثمار متساوية بالنسبة لمستثمري الطرف المتعاقد الآخر، وستقوم على معاملة لا تقل شأنا عن تلك الممنوحة لمستثمريه أو مستثمري دولة ثالثة أيهما أفضل.

4- عندما يحيل مستثمر النزاع إما إلى هيئة تحكيم مختصة لدى الطرف الذي يستقبل الاستثمار أو إلى التحكيم الدولي فإن اختيار أحدهما سيكون نهائيا.

5- سيكون القرار الذي يتخذه المركز الدولي لتسوية النزاعات المتعلقة بالاستثمارات نهائيا وملزما للأطراف. ويضمن كل من الطرفين المتعاقدين الاعتراف وتطبيق الحكم القضائي وفقا لقوانينه وتشريعاته.

2- يكون التعويض مساويا لقيمة الاستثمار منزوع الملكية فورا قبل اتخاذ القرار أو الإعلان عنه أيهما الأول. وسيتضمن فوائد تحسب بنسبة فائدة تجارية لغاية السداد ويتم الدفع دون تأخير ويكون فعليا وقابلا للتحويل الحر على أساس نسبة الصرف المطبق بتاريخ التحويل وفقا لقواعد الصرف المعمول بها.

في حالة نزع الملكية أو حالة التعويض تمنح معاملة لا تقل شأنا عن تلك التي يمنحها الطرف المتعاقد لمستثمريه أو لمستثمري دولة ثالثة.

3- يحق للمستثمر الذي تعرض لنزع الملكية أن يلتمس على الفور من السلطة القضائية أو من سلطة مستقلة عن القضاء، النظر في دعواه وتقييم استثماره وفقا للمبادئ المشار إليها في هذه المادة.

4- إذا قام أحد الأطراف المتعاقدة بنزع عوائد شركة مسجلة أو تأسست وفقا للتشريع المعمول به في إقليمه، وكان مستثمرو الطرف المتعاقد الآخر مشاركين فيها، فإنه يعمل وفقا لتشريعه على تعويض هؤلاء المستثمرين بما يتماشى مع أحكام هذه المادة.

المادة 6 : حرية التحويل

1-يضمن كل طرف متعاقد لمستثمري الطرف المتعاقد الآخر تحويلا دون تأخير وبعملة قابلة للصرف بحرية للمبالغ المترتبة على استثماراتهم. وتتضمن هذه التحويلات بوجه عام ودون تحديد:

أ) الأرباح وعوائد رأس المال ومقسوم الأرباح والفوائد والإتاوات والأجور أو أي عائد ناتج عن الاستثمار؛
ب) ناتج التنازل أو التصفية الكلية أو الجزئية للاستثمار؛
ج) المبالغ المستخدمة لسداد القروض ذات الصلة بالاستثمار؛
د) أجور رعايا أحد الأطراف المتعاقدة ممن سمح لهم بالعمل على أساس الاستثمار في إقليم الطرف المتعاقد الآخر؛
هـ) الأموال التكميلية الضرورية لصيانة أو تطوير الاستثمارات القائمة؛
و) التعويضات المشار إليها في المادتين 4 و 5.

2-تتم التحويلات بعملة قابلة للصرف بحرية دون قيود أو آجال مخلة بسعر الصرف المطبق في السوق بتاريخ التحويل أو بآخر سعر صرف تم تطبيقه على الاستثمارات الوطنية.

3- لا تطبق أحكام الفقرتين (1) و(2) من هذه المادة بقصد إلزام أحد الأطراف المتعاقدة بأن يمنح لمستثمري الطرف الآخر مزايا أو معاملة يمكن أن تمنح بموجب :

أ) اتحاد جمركي أو منطقة تبادل حر أو سوق حر أو اتحاد نقدي أو اتفاق دولي مشابه أو أشكال أخرى من التعاون الإقليمي القائم الآن أو يمكن أن يقام مستقبلا بين الأطراف المتعاقدة.
ب) أي اتفاق أو ترتيب دولي قائم أو مستقبلي ويتعلق جزئيا وأساسا بالنظام الضريبي.

المادة 4 : تعويض الخسائر

1-يتمتع المستثمر والطرف المتعاقد الذي تعرضت استثماراته المنجزة في إقليم الطرف الآخر لخسائر بسبب الحرب، أو نزاع مسلح أو ثورة أو حالة طوارئ وطنية أو تمرد أو اضطراب يقع في إقليم الطرف الآخر من لدن هذا الأخير بالنسبة للتعويض أو السداد أو أي نوع من تعويض الخسائر، لمعاملة لا تقل شأنا عند تلك الممنوحة من هذا الطرف المتعاقد لاستثماراته أو استثمارات دولة ثالثة. وتكون التعويضات المترتبة على ذلك قابلة للتحويل الحر بسعر الصرف المعمول به.

2-دون المساس بالفقرة (1) من هذه المادة، يتمتع مستثمرو الطرف المتعاقد الذين يتعرضون في إحدى الحالات المشار إليها في الفقرة المذكورة لخسائر في إقليم الطرف الآخر بسبب:

أ) تسخير عوائدهم لقوات أو سلطات الطرف المذكور؛
ب) تدمير عوائدهم من قبل قواته أو نشاطاته لأسباب لا تتعلق بالقتال أو لم تكن ناتجة عن الأوضاع المذكورة.

يتمتعون بسداد أو تعويض لا يقل شأنا عن ذلك الممنوح في نفس الظروف لمستثمر الطرف المتعاقد أو لمستثمر دولة ثالثة، وتكون المدفوعات المترتبة على ذلك قابلة للتحويل الحر بسعر الصرف المطبق بتاريخ التحويل ووفقا لقواعد الصرف المعمول به.

المادة 5 : نزع الملكية

1- لن تخضع استثمارات مستثمري أحد الأطراف المتعاقدة للتأميم أو لنزع الملكية (أدناه نزع الملكية) في إقليم الطرف الآخر إلا لضرورة تمليها المصلحة العامة وبشرط كون هذه الإجراءات مطابقة للتدابير القانونية وألا تكون تمييزية وأن يترتب عليها فورا دفع تعويض فعلي ومناسب.

ب) الكيانات القانونية بما فيها الشركات والشركات المسجلة وشركات الأفراد أو المنظمات الأخرى التي تأسست وفقا لقوانين هذا الطرف المتعاقد.

4- "الإقليم" : يعني إقليم جمهورية كوريا أو إقليم الجمهورية الإسلامية الموريتانية وكذلك المياه الإقليمية بما فيها قاع البحار وباطن الأرض حيث يمكن أن تمارس عليها الدولة المعنية وفقا للقانون الدولي حقوقا سيادية في استكشاف واستغلال الموارد الطبيعية.

5- "عملة قابلة للتحويل الحر": تعني العملة الأكثر استخداما في سداد المعاملات الدولية ويتم تداولها بشكل واسع في أهم أسواق البورصة.

المادة 2 : تطوير وتشجيع الاستثمارات

1- يعمل كل طرف على تشجيع وتسهيل دخول استثمارات مستثمري الطرف الآخر إلى إقليمه وفقا لممارساته العامة في مجال الاستثمار الأجنبي، ويقبل أو يعتمد تلك الاستثمارات وفقا لقوانينه ونظمه.

2- تتمتع الاستثمارات التي ينجزها مستثمرو أحد الأطراف المتعاقدة في كل الأوقات بمعاملة عادلة ومنصفة وبحماية تامة في إقليم الطرف الآخر.

3- لن يعرقل أي من الأطراف المتعاقدة بأي شكل من الأشكال بواسطة إجراءات غير مبررة أو تمييزية تسيير وصيانة واستخدام استثمارات الطرف الآخر أو التمتع بها أو زيادتها أو نقل ملكيتها في إقليمه.

المادة 3 : معاملة الاستثمارات

1- تطبق على استثمارات وعوائد مستثمري أي من الأطراف المتعاقدة في جميع الأوقات معاملة عادلة ومنصفة لا يقل شأنها عن تلك التي يمنحها لاستثمارات مستثمريه أو استثمارات مستثمري دولة ثالثة.

2- يمنح كل طرف متعاقد لعوائد واستثمارات مستثمري الطرف الآخر في إقليمه معاملة لا تقل شأنا في مجال التسيير والصيانة أو الزيادة أو نقل الملكية عن تلك الممنوحة لمستثمريه وعوائدهم أو مستثمري دولة ثالثة أيهما أفضل للمستثمر المتضرر.

ن حكومة جمهورية كوريا وحكومة الجمهورية الإسلامية الموريتانية ويصطلح على سميتهما "الأطراف المتعاقدة"

رغبة منهما في خلق الظروف الملائمة لزيادة استثمارات مستثمري أحد الأطراف لمتعاقدة في إقليم الطرف الآخر على أساس مبادئ المساواة واحترام المصالح المشتركة لبلدين.

واقتناعا بضرورة تشجيع وحماية الاستثمارات الأجنبية من أجل النهوض بالرخاء لاقتصادي في البلدين.

اتفقتا على ما يلي :

لمادة الأولى : تعريفات

مقتضى هذه الاتفاقية فإن عبارات :

1- "الاستثمار" : يعني أي عنصر من الأصول يستثمره مستثمرو أحد الأطرف المتعاقدة ي إقليم الطرف الآخر، وبوجه عام ودون تخصيص :

أ) ملكية الأموال المنقولة وغير المنقولة وكافة الحقوق بما فيها التكاليف العقارية والرهون المنقولة وغير المنقولة
ب) الأسهم الإجتماعية وجميع أنواع المشاركة في الشركات
ج) المستحقات النقدية والحقوق المترتبة على أي خدمة تعاقدية ذات قيمة مالية
د) حقوق الملكية الصناعية والفكرية (كحقوق المؤلف وبراءات الاختراع والرسوم والنماذج الصناعية وعلامات المصانع والعلامات التجارية والخدمية والأسماء التجارية وإشارات المنشأ) والأساليب التقنية والمعارف والزبناء
هـ) الامتيازات الممنوحة بموجب قانون أو تعاقد بما فيها امتيازات التنقيب والزراعة واستخراج واستغلال الموارد الطبيعية.

2- " العوائد" : تعني الأموال الناتجة عن الإستثمار، وتشمل عموما ودون تحديد الأرباح والفوائد وعائد رأس المال ومقسوم الأرباح والإتاوات والأجور.

3- "المستثمر" : يعني بالنسبة لكل من الأطراف المتعاقدة :

أ) الأشخاص الماديين الذين يعتبرون وفقا لتشريع أحد الأطراف المتعاقدة رعاياه.

[ARABIC TEXT – TEXTE ARABE]

اتفـــاقيـــة
بيـــن
حكومة جمهورية كوريا
وحكومة الجمهورية الإسلامية الموريتانية
حول تطوير وحماية الاستثمار

[ENGLISH TEXT – TEXTE ANGLAIS]

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF MAURITANIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

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

Desiring to create favourable conditions for greater investments by investors of one Contracting Party in the territory of the other Contracting Party, based on the principles of equality and mutual benefit,

Recognizing that the promotion and protection of investments on the basis of this Agreement will be conducive to the stimulation of individual business initiative and will increase prosperity in both States,

Have agreed as follows:

ARTICLE 1
Definitions

For the purposes of this Agreement:

1. "investments" means every kind of asset invested by investors of one Contracting Party in the territory of the other 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 and rights or interest derived therefrom;
   (c) claims to money or to any performance under contract having as economic value;
   (d) intellectual property rights including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, technical processes, trade secrets and know-how, and goodwill; and
   (e) business concessions having an economic 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 any natural or juridical persons of one Contracting party who invest in the territory of the other Contracting Party:
   (a) the term "natural persons" means natural persons having the nationality of the former Contracting Party in accordance with its laws; and
   (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 the former Contracting Party.

4. "territory" means the territory of the Republic of Korea or the territory of the Islamic Republic of Mauritania respectively, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea over which the State concerned exercises, in accordance with international law, sovereign rights or jurisdiction for the purpose of exploration and exploitation of the natural resources of such areas.

5. "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 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 and security in the territory of the other Contracting Party.

3. Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the operation, management, maintenance, use, enjoyments or disposal of investments in its territory by investors of the other Contracting Party.

ARTICLE 3
Treatment of Investments

1. Each Contracting Party shall in its territory accord to investments and of investors of the other Contracting Party treatment no less favourable than that which it accords to investments of its own investors or to investments of investors of any third State, whichever is more favourable to investors.

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party as regards management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to investors.

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 the investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by virtue of:

(a) any existing or future customs union or free trade area, a common external tariff area, a monetary union or similar international agreement or other forms of regional cooperation to which either Contracting Party is or may become a party; or

(b) any existing or future convention or other international arrangement relating wholly or mainly to taxation.

ARTICLE 4
Compensation for Losses

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. Resulting payments shall be freely transferable without undue delay.

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

shall be accorded restitution or adequate compensation no less favourable than that which would be accorded under the same circumstances to an investor of the other Contracting Party or to an investor of any third State. Resulting payments shall be freely transferable without undue delay.

ARTICLE 5
Expropriation

1. Investments of investors of one Contracting Party shall not be nationalized, expropriated or otherwise subjected 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 purpose and against prompt, adequate and effective compensation. The expropriation shall be carried out on a non-discriminatory basis in accordance with legal procedures.

2. Such compensation shall amount to the fair market value of the expropriated investments immediately before expropriation was taken or before impending expropriation became public knowledge, whichever is the earlier, shall include interest at the applicable commercial rate from the date of expropriation until the date of payment, and shall be made without undue delay, be effectively realizable, and be freely transferable. In both expropriation and compensation, treatment no less favourable than that which the Contracting Party accords to its own investors or to investors of any third State shall be accorded.

3. 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 investment in accordance with the principles set out in this Article.

4. Where a 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, debentures or other forms of participation, the provision of this Article shall be applied.

ARTICLE 6
Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of their investments and returns. Such transfers shall include, in particular, though not exclusively:

(a) net profit, capital gains, dividends, interest, royalties, fees and any other current income accruing from investments;

(b) proceeds accruing from the sale or the total or partial liquidation of investments;

(c) funds in repayment of loans related to investments;

(d) earnings of nationals of the other Contracting Party who are allowed to work in connection with investments in its territory;

(e) additional funds necessary for the maintenance or development of the existing investments; and

(f) compensation pursuant to Article 4 and 5.

2. All transfers under this Agreement shall be made in a freely convertible currency, without undue restriction and delay, at the market exchange rate which is effective for the current transactions or determined in accordance with the official rate of exchange in force on the date of transfers.

ARTICLE 7
Subrogation

1. If a Contracting Party or its designated agency makes a payment to its own investors under an indemnity given in respect of investments, the latter Contracting Party shall recognize:

(a) the assignment, whether under the law or pursuant to a legal transaction in that State, 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.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

ARTICLE 8

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

1. With a view to an amicable solution of disputes, which arise within the terms of this Agreement, between a Contracting Party and an investor of the other Contracting party, consultations will take place between the parties concerned.

2. If these consultations do not result in a solution within six (6) months from the date of request for settlement, the investor may, at the discretion of the investor, submit the dispute either:

(a) to the competent tribunal of the Contracting Party in whose territory the investment was made; or

(b) to international arbitration of the International Center for Settlement of Investment Disputes (ICSID) created by the Convention for the Settlement of Disputes in respect of Investments occurring between States and Nationals of other States, signed in Washington on March 18, 1965.

3. The local remedies under the laws and regulations of one Contracting Party in the territory of which the investment has been made shall be available for investors of the other Contracting Party, on the basis of treatment no less favorable than that accorded to investments of its own investors or investors of any third State, whichever is more favourable to investors.

4. Once the investor has submitted the dispute to the competent tribunal of the Contracting Party in whose territory the investment was made or to international arbitration, that selection shall be final.

5. The award made by ICSID 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.

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 by consultation through diplomatic channels.

2. If any dispute cannot be settled within six (6) months, it shall, at the request of either Contracting Party, be submitted to an ad hoc Arbitral Tribunal in accordance with the provisions of this Article.

3. Such an Arbitral Tribunal shall be constituted for each individual case in the following way: Within three (3) 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, who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within three (3) 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 is also 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 reach its decisions taking into account the provisions of this Agreement and the generally recognized principles of International law.

6. The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties.

7. Each Contracting Party shall bear the costs of its own arbitrator and its representation in the arbitral proceedings. The costs of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The Arbitral Tribunal shall determine its own procedure.

ARTICLE 10

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, nothing in this Agreement shall prevent either Contracting Party or any of its investors from taking advantage of whichever rules are the more favourable to his case.

2. 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.

3. Either Contracting Party shall observe any other obligation that it may have entered into force with regard to investments in its territory by investors of the other Contracting Party.

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 which was settled before its entry into force.

ARTICLE 12

Entry into Force, Duration and Termination

1. Each Contracting Party shall notify the other Contracting Party in writing of the completion of its legal requirements for the entry into force of the Agreement. This Agreement shall enter into force thirty (30) days after the date of the latter of the two notifications.

2. This Agreement shall remain in force for a period of ten (10) years and shall remain in force thereafter indefinitely unless either Contracting Party notifies the other Contraction 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 11 of this Agreement shall remain in force for a further period of ten (10) years from the date of the termination.

4. This Agreement may be revised by mutual consent of both Contracting Parties.

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

DONE in duplicate at Nouakchott on the fifteenth day of December 2004, in the Korean, Arabic, French 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 ISLAM REPUBLIC OF MAURITANIA

[FRENCH TEXT – TEXTE FRANÇAIS]

ACCORD ENTRE

LE GOUVERNEMENT DE LA REPUBLIQUE DE COREE

ET

LE GOUVERNEMENT DE LA REPUBLIQUE ISLAMIQUE DE MAURITANIE

CONCERNANT

LA PROMOTION ET LA PROTECTION DES INVESTISSEMENTS.

Le Gouvernement de la République de Corée et le Gouvernement de la République Islamique de Mauritanie (ci-après dénommés « les Parties Contractantes »).

Désireux de créer des conditions favorables à l'accroissement des investissements par les investisseurs de l'une des Parties Contractantes dans le territoire de l'autre Partie Contractante sur la base de principes d'égalité et de respect des intérêts mutuels des deux Etats,

Reconnaissant la nécessité d'encourager et de protéger les investissements étrangers en vue de promouvoir la prospérité économique des deux Etats,

Sont convenus de ce qui suit :

ARTICLE 1
Définitions

Aux fins du présent Accord :

1. Le terme « **investissement** » désigne tout avoir investi par un investisseur de l'une des Parties Contractantes dans le territoire de l'autre en particulier, mais non exclusivement ;

   a) la propriété de biens meubles et immeubles, ainsi que tous les autres droits réels, tels que charges foncières, gages immobiliers et mobiliers ;

   b) les actions, parts sociales et autres formes de participations dans une société ;

   c) les créances monétaires et droits à toute prestation au titre d'un contrat à valeur économique ;

   d) les créances monétaires et droits à toute prestation au titre d'un contrat à valeur économique ;

   e) les droits de propriété industrielle et intellectuelle (tels que droits d'auteur, brevets d'invention, modèles d'utilité, dessins ou modèles industriels, marque de fabrique ou de commerce, marques de service, noms commerciaux, indications de provenance), les procédés techniques, le savoir-faire et la clientèle ;

   f) les concessions conférées par la loi ou par contrat, y compris les concessions de prospection, de culture, d'extraction ou d'exploitation de ressources naturelles.

2. Le terme « **revenus** » désigne les montants issus d'un investissement et englobe notamment, mais non exclusivement, les bénéfices, les intérêts, les gains en capital, les dividendes, les redevances et les rémunérations.

3. Le terme « **investisseurs** » désigne en ce qui concerne chaque Partie Contractante :

a) les personnes physiques qui, d'après la législation de cette Partie Contractante, sont considérées comme ses nationaux ;

b) les entités juridiques y compris les sociétés, les sociétés enregistrées, les sociétés de personnes ou autres organisations, qui sont constituées conformément à la législation de cette Partie Contractante ;

4. Le terme « **territoire** » désigne le territoire de la République de Corée ou le territoire de la République Islamique de Mauritanie respectivement, aussi bien que les eaux territoriales y compris les fonds marins et leur sous-sol sur lesquels l'Etat concerné peut exercer, en conformité avec le droit international, des droits souverains pour l'exploration et l'exploitation des ressources naturelles.

5. Une « monnaie librement convertible » désigne la monnaie la plus utilisée pour effectuer des paiements pour des transactions internationales et largement échangée dans les principales places boursières.

ARTICLE 2
Promotion et Protection des Investissements,

1. Chaque Partie Contractante encouragera et facilitera, compte tenu de sa pratique générale en matière d'investissements étrangers, les investissements des investisseurs de l'autre Partie Contractante sur son territoire et admettra ou approuvera ces investissements conformément à ses lois et règlements.

2. Les investissements effectués par les investisseurs de chaque partie contractante feront l'objet en tout temps d'un traitement juste et équitable et d'une protection entière dans le territoire de l'autre Partie Contractante.

3. Aucune Partie Contractante n'entravera d'une quelconque manière, par des mesures injustifiées ou discriminatoires, la gestion, l'entretien, l'utilisation, la jouissance, l'accroissement ou l'aliénation des investissements dans son territoire par des investisseurs de l'autre Partie Contractante.

ARTICLE 3
Traitement des investissements

1. Les investissements et les revenus des investisseurs de chaque Partie Contractante se verront accorder en tout temps un traitement, juste et équitable non moins favorable que celui accordé aux investissements de ses propres investisseurs ou aux investissements des investisseurs d'un Etat tiers.

2. Chaque Partie Contractante accordera sur son territoire aux investissements et aux revenus des investisseurs de l'autre Partie Contractante un traitement non moins favorable en matière de gestion, d'entretien, d'utilisation ou d'accroissement et d'aliénation que celui qu'elle accorde aux investisseurs et aux revenus de ses propres investisseurs ou aux investisseurs d'un quelconque Etat tiers, le traitement le plus favorable à l'investisseur en cause étant déterminant.

3. Les dispositions des paragraphes (1) et (2) du présent article ne seront pas applicables aux fins d'obliger une Partie Contractante d'accorder aux investisseurs de l'autre Partie Contractante des avantages de traitement, préférence ou privilège pouvant être accordés en vertu :

   a) d'une union douanière, d'une zone de libre-échange, d'un marché commun, d'une union monétaire ou d'un accord international similaire ou d'autres formes de coopération régionale existante ou future auxquelles l'une des Parties Contractantes est ou peut devenir membre ou ;

   b) de toute convention ou autre arrangement international existant ou futur relatif entièrement ou principalement à la fiscalité.

ARTICLE 4
Compensation pour Pertes

1. Les investisseurs d'une Partie Contractante dont les investissements effectués sur le territoire de l'autre Partie Contractante ont subi des pertes dues à la guerre ou à tout autre conflit armé, révolution, état d'urgence national, révolte insurrection ou émeute survenus sur le territoire de cette dernière Partie Contractante, bénéficieront, de la part de celle-ci, en ce qui concerne la restitution, l'indemnisation, la compensation ou tout autre règlement, d'un traitement non moins favorable que celui qu'elle accorde à ses propres investisseurs ou aux investisseurs d'un quelconque Etat tiers. Les paiements en résultant seront librement transférables au taux de change en vigueur.

2. Sans préjudice de l'alinéa 1 du présent article, les investisseurs d'une Partie Contractante qui, dans l'une des situations visées par ledit alinéa, ont subi des pertes sur le territoire de l'autre Partie Contractante du fait :

   a) de la réquisition de leurs avoirs par ses forces ou ses autorités, ou ;

b) de la destruction de leurs avoirs par ses forces ou ses activités, qui ne résulterait pas de combats ou n'était pas requise par la situation.

Se verront accorder une restitution ou une compensation non moins favorable que celle accordée dans les mêmes circonstances à un investisseur de l'autre Partie Contractante ou à un investisseur d'un Etat tiers. Les paiements en résultant seront librement transférables au taux de change applicable à la date du transfert conformément aux règles de change en vigueur.

ARTICLE 5
Expropriation

1. Les investissements des investisseurs d'une Partie Contractante ne seront pas nationalisés, expropriés ou soumis à des mesures ayant des effets équivalents à une nationalisation ou à une expropriation (ci-après dénommées « expropriation ») sur le territoire de l'autre Partie Contractante, si ce n'est pour des motifs d'intérêts public et à condition que ces mesures soient conformes aux prescriptions légales, qu'elles ne soient pas discriminatoires et qu'elles donnent lieu au prompt versement d'une indemnité effective et adéquate.

2. L'indemnité se montera à la valeur réelle de l'investissement exproprié immédiatement avant que l'expropriation ne soit entreprise ou qu'elle ne soit connue dans le public, le premier de ces faits étant déterminant. Elle inclura des intérêts calculés à un taux commercial jusqu'à la date du paiement, sera versée sans retard, sera pleinement réalisable et librement transférable sur la base du taux de change applicable à la date du transfert conformément aux règles de change en vigueur. Dans le cas de l'expropriation comme dans celui de la compensation, un traitement, non moins favorable que celui que la Partie Contractante accorde à ses propres investisseurs ou aux investisseurs de tout Etat tiers sera accordé.

3. L'investisseur concerné par l'expropriation aura le droit de faire procéder à un prompt réexamen, selon la législation de la Partie Contractante qui exproprie, par une autorité judiciaire ou une autorité indépendante de cette partie, de son cas et de l'estimation de son investissement conformément aux principes énoncés dans le présent article.

4. Si une Partie Contractante exproprie les avoirs d'une société enregistrée ou constituée conformément à la législation en vigueur sur son territoire et dans laquelle des investisseurs de l'autre Partie Contractante détiennent des parts, elle fera en sorte, dans la mesure nécessaire et conformément à sa législation, que ces investisseurs soient indemnisés en conformité avec les dispositions de ce présent article

ARTICLE 6

Libre Transfert

1. Chaque Partie Contractante garantit aux investissements de l'autre Partie Contractante le transfert sans délai dans une monnaie librement convertible des montants afférents aux investissements. Ces transferts incluront en particulier, mais non exclusivement :

a) les bénéfices, gains en capital, dividendes, intérêts, redevances, rémunérations et tout autre revenu émanant des investissements ;
b) le produit de la cession ou de la liquidation totale ou partielle d'investissement ;

c) les fonds en remboursement de prêts liés aux investissements ;

d) les rémunérations des ressortissants d'une Partie Contractante qui ont été autorisés à travailler au titre d'un investissement, sur le territoire de l'autre Partie Contractante ;

e) les fonds supplémentaires nécessaires à l'entretien ou à la promotion des investissements existants ; et

f) les compensations conformément à l'article 4 et 5.

2. Les transferts seront effectués dans une monnaie librement convertible sans restriction ni délai, au taux de change prévalant sur le marché à la date du transfert ou au taux le plus récent appliqué aux investissements nationaux.

ARTICLE 7
Principe de Subrogation

1. Si une Partie Contractante ou un organisme désigné par elle effectue, un paiement à titre d'indemnité pour un investissement effectué sur le territoire de l'autre Partie Contractante, cette dernière Partie Contractante reconnaîtra :

a. la cession à la première Partie Contractante ou à l'organisme désigné par elle, en vertu de la loi ou d'un contrat, de tous les droits et créances de l'investisseur indemnisé et ;

b. le droit pour la première Partie Contractante ou l'organisme désigné par elle d'exercer ses droits et de faire valoir ces créances par voie de subrogation dans la même mesure que l'investisseur.

2. Les droits et réclamations en vertu de la subrogation n'excéderont pas les droits et réclamations premières de l'investisseur.

ARTICLE 8
Différends Relatifs à l'Investissement

1. Tout différend entre une Partie Contractante et un investisseur de l'autre Partie Contractante relatif à un investissement, sera dans la mesure du possible réglé à l'amiable par le biais de négociations entre les parties au différend.

2. Au cas où le différend ne peut être réglé par le biais de la négociation dans un délai de 6 mois, l'investisseur pourra, à sa discrétion initier une procédure judiciaire auprès du :

   a. tribunal compétent de la Partie Contractante qui a accueilli l'investissement ;

   b. d'un arbitrage international du Centre International de Règlement des Différends liés à l'Investissement (CIRDI), créé par la convention sur le règlement des différends relatifs à l'investissement, entre Etat et ressortissants d'autres Etats, signée à Washington le 18 mars 1965.

3. Le redressement local prévu par les lois et règlements d'une Partie Contractante qui accueille l'investissement sera le même pour les investisseurs de l'autre Partie Contractante sur la base d'un traitement non moins favorable accordé aux investissements de ses propres investisseurs ou aux investisseurs d'un autre Etat tiers, le plus favorable étant le plus déterminant.

4. Une fois qu'un investisseur a soumis le différend soit auprès d'un tribunal compétent de la Partie Contractante accueillant l'investissement soit à l'arbitrage international, le choix de l'une ou de l'autre de ces procédures reste définitif.

5. La décision prise par le CIRDI sera définitive et obligera les parties à se conformer à la sentence. Chaque Partie Contractante assurera la reconnaissance et l'application de la sentence en conformité avec ses lois et règlements pertinents.

ARTICLE 9
Différends entre les Parties Contractantes

1. Tout différend entre les Parties Contractantes portant sur l'interprétation ou à la mise en œuvre du présent accord sera, dans la mesure du possible, réglé par voie diplomatique.

2. Si le différend ne peut être réglé de cette manière dans un délai de 6 mois, il sera soumis à l'arbitrage à la requête de l'une ou de l'autre des Parties Contractantes d'un tribunal arbitral ad hoc conformément aux dispositions du présent article.

3. Le tribunal arbitral (ci-après dénommé « le tribunal ») sera constitué pour chaque cas de la manière suivante : dans un délai de 3 mois après la réception de la demande d'arbitrage, chaque Partie Contractante désignera un arbitre et le troisième, qui sera le Président du tribunal et ressortissant d'un Etat tiers, sera désigné d'un commun accord par les Parties Contractantes. Le Président sera nommé dans un délai de (3) mois à partir de la date de nomination des deux membres.

4. Au cas où le tribunal n'a pas été constitué dans les délais spécifiés à l'alinéa 3 du présent article, chacune des Parties Contractantes pourra, à défaut de tout autre accord, demander au Président de la Cour Internationale de Justice de désigner les arbitres. Si le Président est ressortissant de l'une ou de l'autre des Parties Contractantes ou s'il est empêché pour quelque raison que ce soit de s'acquitter les dites fonctions, le Vice-président est invité à faire les nominations demandées ; si le Vice-président est ressortissant de l'une ou de l'autre des Parties Contractantes ou ne peut s'acquitter de ladite fonction, le membre de la Cour Internationale de Justice qui suit immédiatement dans l'ordre de préséance et qui n'est pas ressortissant de l'une ou de l'autre des Parties Contractantes, est invité à procéder aux nominations nécessaires.

5. Le tribunal arbitral décide sur la base des dispositions du présent accord et des autres accords en vigueur entre les Parties Contractantes, selon les principes du Droit International.

6. Le tribunal détermine la procédure. Il statue à la majorité des voix à la demande de l'une ou de l'autre Partie Contractante. Cette sentence arbitrale est définitive et obligatoire pour les parties.

7. Chaque Partie Contractante supporte les frais afférents à son propre arbitre et à son représentant. Les frais afférents au président ainsi que tous les autres frais sont supportés à parts égales par les parties.

ARTICLE 10
L'application d'autres Règles

1. Si les dispositions de cet accord ou d'un autre accord international auquel les Parties Contractantes sont parties traitent à la fois d'une question, rien n'empêchera dans cet accord l'une ou l'autre des parties contractantes ou ses investisseurs de se prévaloir des dispositions qui leur sont les plus favorables.

2. Si le traitement accordé par une Partie Contractante aux investisseurs de l'autre Partie Contractante en conformité avec ses lois et règlements ou à toutes autres dispositions ou contrats est plus favorable que celui prévu par le présent accord, il prévaudra sur ce dernier car il est plus favorable.

3. Chaque Partie Contractante se conformera à toute obligation particulière contractée à l'égard d'un investissement effectué sur son territoire par un investisseur de l'autre Partie Contractante.

ARTICLE 11
Application de l'Accord

Le présent accord couvre tous les investissements y compris ceux effectués avant son entrée en vigueur. Toutefois le présent accord ne s'appliquera pas aux différends liés aux investissements qui pourraient survenir avant son entrée en vigueur.

ARTICLE 12
Entrée en Vigueur, Durée et Expiration

1. Chaque Partie Contractante notifiera à l'autre Partie Contractante de l'accomplissement des procédures requises par sa législation pour l'entrée en vigueur du présent accord ; celui-ci entrera en vigueur 30 jours suivant la réception de la dernière notification.

2. Le présent accord restera valable pour une durée de 10 ans. Il le restera indéfiniment par la suite à moins que l'une des Parties Contractantes notifie à l'autre par écrit une année à l'avance, son intention de mettre un terme au présent accord.

3. Par rapport aux investissements effectués avant l'expiration du présent accord, les dispositions de l'article 1 à l'article 11 du présent accord resteront en vigueur pour une période supplémentaire de (10) ans à compter de ladite expiration.

4. Le présent accord peut être révisé d'un commun accord des deux Parties Contractantes.

En foi de quoi, les soussignés dûment autorisés à cet effet par leurs Gouvernements respectifs, ont signé le présent accord.

Fait à Nouakchott /, le 15 Décembre 2004, en double exemplaire en langue Coréenne, Arabe, Français et Anglais – tous les textes étant authentiques. Dans le cas d'un différend relatif à l'interprétation la version anglaise prévaudra sur les autres.

Pour le Gouvernement de la République de Corée

S.E. M. Jayson PARK
Ambassadeur Extraordinaire et Plénipotentiaire de la République de Corée en Mauritanie

Pour le Gouvernement de la République Islamique de Mauritanie

Sidi Ould DIDI
Ministre des Affaires Economiques et du Développement

[KOREAN TEXT – TEXTE CORÉEN]

대한민국 정부와 모리타니아공화국 정부간의 투자의 증진 및 상호 보호에 관한 협정

대한민국 정부와 모리타니아공화국 정부(이하 "체약당사자"라 한다)는,

평등과 호혜의 원칙에 기초하여 일방체약당사자의 투자자의 타방체약당사자의 영역 안에서 행하는 투자에 유리한 여건을 조성하기를 희망하며,

이 협정에 따른 투자의 증진 및 보호가 개별기업의 사업상 선도적 역할을 촉진하는 데 기여하고 두 나라의 번영을 증진시킬 것임을 인식하여,

다음과 같이 합의하였다.

제 1 조
정 의

이 협정의 목적상,

1. "투자"라 함은 일방체약당사자의 투자자가 타방체약당사자의 영역 안에서 투자한 모든 종류의 자산을 말하며, 특히 다음 각목의 사항을 포함하나 이에 한정되지 아니한다.
   가. 동산·부동산과 저당권·유치권·리스·질권 등 그 밖의 재산권
   나. 회사 또는 기업의 지분·주식·회사채 및 그 밖의 형태의 참여와 이로부터 발생하는 권리 또는 이익
   다. 금전청구권이나 경제적 가치가 있는 계약상의 이행 청구권
   라. 저작권·특허권·상표권·상호권·의장·기술공정·거래비밀·노하우 등을 포함하는 지적재산권 및 영업권
   마. 천연자원의 탐사·개간·추출·개발을 위한 양허권을 포함하여 법률 또는 계약에 의하여 부여되는 경제적 가치가 있는 사업양허권

   투자 또는 재투자된 자산의 형태에 어떠한 변경이 있다고 하더라도 이는 투자자로서의 성격에 영향을 미치지 아니한다.

2. "수익"이라 함은 투자에 의하여 발생한 금액을 말하며, 특히 이윤·이자·자본소득·배당금·사용료 그리고 모든 종류의 수수료를 포함하나 이에 한정되지 아니한다.

3. "투자자"라 함은 타방체약당사자의 영역안에서 투자하는 전기체약당사자의 자연인 및 법인을 말한다.

가. "자연인"이라 함은 각 체약당사자의 법률에 따라 그 체약당사자의 국적을 가진 자연인을 말한다.

나. "법인"이라 함은 회사·공공기관·정부기관·재단·합명회사·상사·조직체·기구·주식회사·협회 등과 같이 전기체약당사자의 법령에 따라 설립 또는 조직된 모든 실체를 말한다.

4. "영역"이라 함은 대한민국 영역과 모리타니공화국 영역을 각각 말하며 국제법에 따라 천연자원의 탐사·개발을 목적으로 주권적 권리 또는 관할권을 행사하는 각국의 영해의 외측 한계선에 인접한 해저 및 하층토를 포함한 수역을 말한다.

5. "자유태환통화"라 함은 국제거래의 지불수단으로 광범위하게 사용되며 주요한 국제외환시장에서 광범위하게 교환되는 통화를 말한다.

제 2 조
투자의 증진 및 보호

1. 각 체약당사자는 타방체약당사자의 투자자가 자국의 영역안에서 투자를 하는데 유리한 여건을 조성하며, 그러한 투자를 당사자의 법령에 따라 허용한다.

2. 각 체약당사자의 투자자가 행한 투자는 타방체약당사자의 영역안에서 항상 공정하고 공평한 대우를 받으며, 완전한 보호와 안전을 향유한다.

3. 각 체약당사자는 타방체약당사자의 투자자가 자국의 영역안에서 행한 투자에 대한 운영·관리·유지·사용·향유 또는 처분과 관련하여 부당하거나 차별적인 조치에 의하여 이를 저해하지 아니한다.

제 3 조
투자의 대우

1. 각 체약당사자는 자국의 영역안에서 타방체약당사자의 투자자가 투자에 대하여 공정하고 공평한 대우를 하며, 체약당사자의 투자가가 투자에 부여하는 대우 또는 제3국의 투자자가 투자에 대하여 부여하는 대우 중 유리한 것보다 불리하지 아니한 대우를 부여한다.

2. 각 체약당사자는 자국의 영역안에서 타방체약당사자의 투자자가 행한 투자의 관리·유지·사용·향유 또는 처분과 관련하여 체약당사자 또는 제3국의 투자자에게 부여하는 대우 중 유리한 것보다 불리하지 아니한 대우를 부여한다.

3. 제1항 및 제2항의 규정은 일방체약당사자가 다음 각목에 따라 부여하는 어떠한 대우·특혜 또는 특권의 혜택을 타방체약당사자의 투자자에 대하여도 부여하여야 하는 것으로 해석되지 아니한다.

가. 일방체약당사자가 당사자인 또는 당사자가 될 모든 기존의 또는 미래의 관세동맹·자유무역지대·공동역외관세지역·통화동맹 또는 유사한 국제협정 및 다른 형태의 지역 협력

나. 전적으로 또는 주로 조세와 관련된 기존 또는 미래의 국제협정이나 약정

제 4 조
손실에 대한 보상

1. 일방체약당사자의 투자자에 의한 투자가 타방체약당사자 영역 안에서 전쟁·무력충돌·국가비상사태·무장항거·반란·폭동 또는 다른 유사한 사태로 인하여 손실을 입는 경우에, 투자자는 그에 대한 복구·배상·보상 또는 다른 해결에 관하여 동 타방체약당사자가 당사자 또는 제3국의 투자자에게 부여하는 것보다 불리하지 아니한 대우를 동 타방체약당사자에 의하여 부여받는다. 이에 따르는 지급금은 부당한 지체없이 자유로이 송금될 수 있어야 한다.

2. 일방체약당사자의 투자자는 제1항에 규정된 사태와 관련하여 타방당사자의 영역 안에서 발생하는 다음 각목의 사유로 손실을 입은 경우, 제1항의 규정에 의한 권리를 침해받지 아니하고 동일한 상황에서 타방체약당사자 또는 제3국의 투자자에게 부여되는 것보다 불리하지 아니한 원상회복이나 적절한 보상을 부여받으며, 이에 따른 지급금은 부당한 지체 없이 자유롭게 송금될 수 있어야 한다.

가. 타방체약당사자의 군대 또는 당국에 의한 투자자의 재산 징발

나. 교전행위에 기인하지 아니 하였거나 그 상황에서 필수적으로 요구되지 아니하였음에도 타방체약당사자의 군대 또는 당국에 의한 투자자의 재산 파괴

제 5 조
수 용

1. 국유화·수용 또는 이에 상응하는 효과를 가지는 조치(이하 "수용"이라 한다)가 공공의 목적을 위한 것이고, 이에 대하여 신속·충분·유효한 보상이 이루어지지 아니하는 한, 일방체약당사자의 투자자가 행한 투자는 타방체약당사자의 영역 안에서 수용을 당하지 아니한다. 수용은 비차별적 기초위에서 적법한 절차에 따라 행하여져야 한다.

2. 그러한 보상은 수용이 이루어지거나 수용이 임박하였음이 공공연히 알려지기 직전 중 보다 이른 시기에 수용된 투자의 공정한 시장가치에 상당하여야 하고, 수용일부터의 지불일까지의 적용가능한 상업이자율에 따른 이자를 포함하여야 하며, 부당한 지체없이 지급되고, 유효하게 현금화하며, 자유롭게 송금할 수 있어야 한다. 수용과 보상시 당사자가 당사자 또는 제3국의 투자자에게 부여하는 것보다는 불리하지 아니한 대우가 부여된다.

3. 수용에 의하여 영향을 받은 일방체약당사자의 투자자는 자신의 사안 및 투자의 가치산정에 대하여, 이 조에 규정된 원칙에 따라 타방체약당사자의 사법당국 또는 그 밖의 독립된 당국에 의하여 신속한 심사를 받을 권리를 가진다.

4. 일방체약당사자의 법령에 의하여 조직되거나 설립되고 타방체약당사자의 투자자가 지분·사채 또는 다른 형태의 참여로서 소유하는 회사의 자산을 수용하는 경우 이 조의 규정이 적용된다.

제 6 조
송 금

1. 각 체약당사자는 투자 및 수익의 자유로운 송금을 타방체약당사자의 투자자에게 보장한다. 그러한 송금은 특히 다음 각목의 사항을 포함하나, 이에 한정되지 아니한다.

가. 투자에서 발생하는 순이익 · 자본금 · 배당 · 이자 · 사용료 · 수수료 및 그 밖의 경상소득

나. 투자의 매각 또는 전면적 · 부분적 청산에 의한 수익금

다. 투자와 관련된 차관의 상환금

라. 투자와 관련하여 당사자 영역 안에서 근로를 허가받은 타방체약당사자 국민의 소득

마. 기존 투자의 유지 또는 발전에 필요한 추가적 자금

바. 제4조 및 제5조에 의한 보상

2. 이 협정에 따른 의한 송금은 부당한 제한이나 지체 없이 이루어지며, 그리고 송금 당일에 유효한 공식적인 시장환율에 의하거나 또는 그 당시 거래에서 유효한 환율에 따라 자유태환통화로 이루어진다.

제 7 조
대 위 변 제

1. 일방체약당사자 또는 그 지정기관이 투자에 대한 보증에 의하여 당사자 투자자에게 지불 조치를 할 경우, 타방체약당사자는 다음 각목의 사항을 인정한다.

가. 투자자의 권리 또는 청구권이 그 국가의 법률 또는 적법한 거래에 따라 일방체약당사자 또는 그 지정기관에 양도되는 것

나. 일방체약당사자 또는 그 지정기관이 대위변제에 의하여 상기 투자자의 권리를 행사하고 청구권을 집행할 자격을 가지게 되는 것

2. 대위변제권 또는 청구권은 투자자의 원래의 권리 또는 청구권의 범위를 초과하지 아니한다.

제 8 조
일방체약당사자와 타방체약당사자 투자자간의 투자에 관한 분쟁 해결

1. 이 협정과 관련하여 발생한 일방체약당사자와 타방체약당사자의 투자자간 분쟁을 우호적으로 해결하기 위하여, 각 당사자는 상호 협의한다.

2. 분쟁이 제기된 일자부터 6월내에 당사자간 협의를 통하여 분쟁이 해결되지 아니할 경우, 투자자는 분쟁을 다음의 절차에 회부할 수 있다.

가. 투자 유치국의 권한 있는 법원

나. 1965년 3월 18일 워싱턴에서 서명을 위하여 개방된 국가와타방국가 국민간의투자분쟁의해결에관한협약에의하여 설립된 국제투자분쟁해결본부를 통한 국제중재

3. 투자가 이루어진 영역 안에서 일방체약당사자의 법령에 따른 구제절차는 자국의 투자자 또는 그 밖의 제3국의 투자자에게 부여하는 대우 중 투자자에게 더욱 유리한 것보다 불리하지 아니한 대우로 타방체약당사자의 투자자에게 이용 가능하여야 한다.

4. 국제투자분쟁해결본부가 내린 판정은 최종적이며 분쟁당사자에게 구속력을 가진다. 각 체약당사자는 자국의 관계법령에 따라 판정의 승인과 집행을 보장한다.

5. 국제투자분쟁해결본부에서 내려진 중재판정은 분쟁당사자에 대하여 최종적·구속적 효력을 지닌다. 각 체약당사자는 각자의 관련 법령에 따라 동 판정의 승인·집행을 보장한다.

제 9 조
체약당사자간 분쟁의 해결

1. 이 협정의 해석이나 적용에 관한 체약당사자간의 분쟁은 가능한 한 협의 또는 외교적 경로를 통하여 해결된다.

2. 분쟁이 6월 이내에 해결되지 아니하는 경우에는, 그 분쟁은 일방체약당사자의 요청에 의하여 이 조의 규정에 따라 임시중재판정부에 회부된다.

3. 중재판정부는 다음의 방법에 의하여 사안별로 구성된다. 각 체약당사자는 중재요청의 접수일부터 3월 이내에 1인의 중재인을 임명한다. 이러한 2인의 중재인은 제3국의 국민 1인을 선정하며, 동인은 양 체약당사자의 동의를 얻어 판정부의 장으로 임명된다. 판정부의 장은 다른 2인의 중재인의 임명일부터 3월 이내에 임명된다.

4. 제3항에 규정된 기간 내에 필요한 임명이 이루어지지 아니하는 경우, 각 체약당사자는 국제사법재판소 소장에게 그러한 임명을 요청할 수 있다. 국제사법재판소소장이 일방체약당사자의 국민이거나 위의 임무를 수행할 수 없는 경우, 국제사법재판소 부소장에게 그러한 임명을 요청한다. 국제사법재판소 부소장도 일방체약당사자의 국민이거나 위의 임무를 수행할 수 없는 경우에는 일방체약당사자의 국민이 아닌 자로서 국제사법재판소의 그 다음 서열의 재판관에게 그러한 임명을 요청한다.

5. 중재판정부는 본 협정 및 일반적으로 인정되는 국제법의 원칙을 고려하여 결정한다.

6. 중재판정부는 다수결에 의하여 결정을 내린다. 그러한 결정은 양 체약당사자에 대하여 구속력을 가진다.

7. 각 체약당사자는 당사자가 임명한 중재인에 대한 비용과 중재절차에서 당사자를 대표하는데 소요되는 비용을 부담한다. 판정부의 장에 대한 비용과 그 밖의 비용은 양 체약당사자가 균등하게 부담한다. 중재재판소는 중재재판절차를 결정한다.

제 10 조
다른 규칙 및 특별약정의 적용

1. 사안이 이 협정과 양 체약당사자가 당사자인 다른 국제협정에 의하여 동시에 규율되는 경우에는, 이 협정의 어떠한 규정도 일방체약당사자 또는 동 체약당사자의 투자자가 자신의 사안에 대하여 더 유리한 규칙을 원용하는 것을 방해하지 아니한다.

2. 일방체약당사자가 타방체약당사자의 투자자에 대하여 당사자의 법령이나 다른 특별규정 또는 계약에 따라 부여하는 대우가 이 협정에서 부여하는 것보다 더 유리한 경우에는 그 유리한 대우가 부여된다.

3. 각 체약당사자는 타방체약당사자의 투자자가 자국의 영역 안에서 행한 투자와 관련하여 부담하게 되는 그 밖의 의무를 준수한다.

제 11 조
협정의 적용

이 협정은 그 발효 이전이나 이후에 행하여진 모든 투자에 대하여 적용된다. 다만, 이 협정의 발효 이전에 해결된 투자에 관한 분쟁에는 적용되지 아니한다.

제 12 조
발효, 존속 및 종료

1. 일방체약당사자는 협정의 발효에 필요한 모든 법적 요건을 충족하였음을 서면으로 타방체약당사자에게 통보한다. 이 협정은 상호 통보한 날부터 30일 이후에 발효한다.

2. 이 협정은 10년간 유효하며, 그 이후에는 일방체약당사자는 타방체약당사자에 대하여 이 협정의 종료의사를 1년 이전에 서면통보하지 아니하는 한 무기한 유효하다.

3. 제1조 내지 제11조의 규정은 이 협정의 종료 이전에 행하여진 투자에 대하여 협정의 종료일부터 10년간 더 유효하다.

4. 동 협정은 체약당사자간의 상호 합의에 의하여 개정될 수 있다.

이상의 증거로, 아래 서명자들은 그들 각자의 정부로부터 정당하게 권한을 위임받아 이 협정에 서명하였다.

2004 년 12 월 15 일 누악쇼트 에서 동등하게 정본인 한국어·아랍어·프랑스어 및 영어로 각 2부씩 작성하였다. 해석상의 차이가 있는 경우에는 영어본이 우선한다.

대한민국 정부를 대표하여

모리타니아공화국 정부를 대표하여

No. 49679

Republic of Korea
and
Luxembourg

Agreement between the Government of the Republic of Korea and the Government of the Grand Duchy of Luxembourg on air services (with annex). Luxembourg, 27 September 2000

Entry into force: *provisionally on 27 September 2000 by signature and definitively on 21 May 2003 by notification, in accordance with article 20*

Authentic texts: *English, French and Korean*

Registration with the Secretariat of the United Nations: *Republic of Korea, 6 July 2012*

République de Corée
et
Luxembourg

Accord entre le Gouvernement de la République de Corée et le Gouvernement du Grand-Duché de Luxembourg relatif au transport aérien (avec annexe). Luxembourg, 27 septembre 2000

Entrée en vigueur : *provisoirement le 27 septembre 2000 par signature et définitivement le 21 mai 2003 par notification, conformément à l'article 20*

Textes authentiques : *anglais, français et coréen*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 6 juillet 2012*

[ENGLISH TEXT – TEXTE ANGLAIS]

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF KOREA

AND

THE GOVERNMENT OF THE GRAND DUCHY OF

LUXEMBOURG

ON AIR SERVICES

The Government of the Republic of Korea and the Government of the Grand Duchy of Luxembourg (hereinafter referred to as "the Contracting Parties"),

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944;

Desiring to conclude an agreement for the purpose of establishing and operating air services between and beyond their respective territories; and

Desiring to ensure the highest degree of safety and security in international air transport;

Have agreed as follows:

ARTICLE 1
Definitions

For the purpose of this Agreement, unless the context otherwise requires, the term:

(a) "the Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944, and includes any annex adopted under Article 90 of that Convention and any amendment of the annexes or Convention under Articles 90 and 94 thereof insofar as these annexes and amendments have become effective for both Contracting Parties;

(b) "aeronautical authorities" means, in the case of the Republic of Korea, the Minister of Construction and Transportation, and in the case of the Grand Duchy of Luxembourg, the Minister responsible for the subject of Civil Aviation, or in both cases any other person or body authorized to perform the functions exercised at present by the said authorities;

(c) "designated airline" means an airline which has been designated and authorized in accordance with Article 3 of this Agreement;

(d) "tariffs" means the prices to be paid for the carriage of passengers and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services but excluding remuneration and conditions for the carriage of mail;

(e) "territory" in relation to a State has the meaning assigned to it in Article 2 of the Convention;

(f) "air service", "international air service", "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in Article 96 of the Convention;

(g) "capacity" in relation to an aircraft means the payload of that aircraft available on a route or section of a route;

(h) "capacity" in relation to an agreed service means the capacity of the aircraft used on such service multiplied by the frequency operated by such aircraft over a given period and route or section of a route; and

(i) "Annex" means the Annex to this Agreement or as amended in accordance with the provisions of Article 16 of this Agreement. The Annex forms an integral part of this Agreement, and all references to the Agreement shall include references to the Annex except where otherwise explicitly provided.

ARTICLE 2
Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement to enable its designated airlines to establish and operate scheduled international air services on the routes specified in the Annex. Such services and routes are hereinafter called "the agreed services" and "the specified routes" respectively.

2. Subject to the provisions of this Agreement, the designated airlines of each Contracting Party shall enjoy, while operating the agreed services on the specified routes, the following rights:

   (a) to fly without landing across the territory of the other Contracting Party;

   (b) to make stops in the territory of the other Contracting Party for non-traffic purposes; and

   (c) to take up and put down passengers, cargo and mail at any point on the specified routes subject to the provisions contained in the Annex.

3. Nothing in paragraph 2 of this Article shall be deemed to confer on the designated airlines of one Contracting Party the rights of taking up, in the territory of the other Contracting Party, passengers, cargo or mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.

ARTICLE 3
Designation of Airlines

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines for the purpose of operating the agreed services on the specified routes.

2. On receipt of such designation, the aeronautical authorities of the other Contracting Party shall, subject to the provisions of paragraphs 3 and 4 of this Article, grant without delay to the designated airlines the appropriate operating authorization.

3. The aeronautical authorities of one Contracting Party may require the designated airlines of the other Contracting Party to satisfy them that they are qualified to fulfill the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.

4. Each Contracting Party shall have the right to refuse to accept the designation of airlines, to refuse to grant the operating authorization referred to in paragraph 2 of this Article, or to impose such conditions as it may deem necessary on the exercise by the designated airlines of the rights specified in Article 2 of this Agreement, in any case where the said Contracting Party is not satisfied that substantial ownership and effective control of those airlines are vested in the Contracting Party designating the airlines or in its nationals.

5. The airlines designated and authorized in accordance with the provisions of paragraphs 1 and 2 of this Article may begin to operate the agreed services, provided that the capacity is regulated under Article 9 of this Agreement and that tariffs established in accordance with the provisions of Article 10 of this Agreement are in force in respect of those services.

ARTICLE 4
Revocation and Suspension of Rights

1. Each Contracting Party shall have the right to revoke an operating authorization or to suspend the exercise of the rights specified in Article 2 of this Agreement by the airlines designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights:

   (a) in any case where it is not satisfied that substantial ownership and effective control of those airlines are vested in the Contracting Party designating the airlines or in nationals of such Contracting Party; or

   (b) in the case of failure by those airlines to comply with the laws or regulations of the Contracting Party granting those rights; or

   (c) in any case where the airlines otherwise fail to comply with the provisions of this Agreement.

2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 1 of this Article is essential to prevent further infringements of laws or regulations, such rights shall be exercised by each Contracting Party only after consultation with the other Contracting Party.

ARTICLE 5
Applicability of Laws and Regulations

1. The laws and regulations of one Contracting Party governing entry into, stay in, or departure from its territory of an aircraft engaged in international air navigation or flights of such aircraft over that territory shall be applied to the aircraft of the designated airlines of the other Contracting Party and shall be complied with by the airline or airlines of the other Contracting Party upon entering into or departing from and while within the territory of the first Contracting Party.

2. The laws and regulations of one Contracting Party governing entry into, stay in, transit through or departure from its territory of passengers, crew, cargo and mail, such as those concerning the formalities of entry and exit, of emigration and immigration, customs, currency, medical and quarantine measures, shall be applied to the passengers, crew, cargo or mail carried by the aircraft of the designated airlines of the other Contracting Party upon entry into, transit through or departure from and while within the territory of the first Contracting Party.

ARTICLE 6
Safety

1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by either Contracting Party shall, during the period of their validity, be recognized as valid by the other Contracting Party. Each Contracting Party reserves the right, however, not to recognize as valid, for the purpose of flights over its own territory, certificates of competency and licenses granted to its own nationals or rendered valid for them by the other Contracting Party or by any other State.

2. Either Contracting Party may request consultations concerning the safety standards maintained by the other Contracting Party relating to the aeronautical facilities, aircrew, aircraft, and operation of the designated airlines. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards which may be established pursuant to the Convention, the other Contracting Party shall be notified of such findings and the necessity to conform with these minimum standards, and the other Contracting Party shall take appropriate corrective action. Each Contracting Party reserves the right to withhold, revoke or limit the operating authorization or technical permission of an airline or airlines designated by the other Contracting Party in the event the other Contracting party does not take such appropriate action within a reasonable time.

3. Any action taken by one Contracting Party in accordance with paragraph 2 of this Article shall be discontinued immediately once the basis for the taking of that action ceases to exist.

ARTICLE 7
Aviation Security

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall, in particular, act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal, on 23 September 1971 and the Protocol for the Suppression of Unlawful Acts of Violence at

Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988, or any other convention on aviation security to which both Contracting Parties shall become members.

2. The Contracting Parties shall provide, upon request, all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities and any other threat to the security of civil aviation.

3. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as annexes to the Convention to the extent that such security provisions are applicable to the Contracting Parties; and they shall require that operators of aircraft of their registry, or operators of aircraft who have their principal place of business or permanent residence in their territory, and the operators of airports in their territory, act in conformity with such aviation security provisions.

4. Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3 of this Article required by the other Contracting Party for entry into, departure from or while within, the territory of the other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within their territories to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occur, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

ARTICLE 8
Customs Duties and other Similar Charges

1. Aircraft operating on international services by the designated airlines of the Contracting Parties, as well as their regular equipment, spare parts, including engines, supplies of fuel and lubricants, and aircraft stores (including liquor, tobacco and other products destined for sale to passengers in limited quantities during the flight) on board such aircraft shall be exempt from all customs duties, inspection fees and other similar charges on arriving in the territory of the other Contracting Party in accordance with the provisions of the laws and regulations in force of each Contracting Party, provided that such equipment and supplies remain on board the aircraft up to such time as they are reexported.

2. The following shall also be exempt from the same duties, fees and charges, in accordance with the provisions of the laws and regulations in force of each Contracting Party, with the exception of charges corresponding to the service performed:

   (a) aircraft stores taken on board in the territory of either Contracting Party, within the limits fixed by the competent authorities of the said Contracting Party, and for use on board aircraft engaged in the agreed services of the other Contracting Party;

   (b) spare parts, including engines, brought into the territory of either Contracting Party for the maintenance or repair of aircraft used on the agreed services by the designated airlines of the other Contracting Party; and

c) fuel, lubricants and consumable technical supplies destined to supply aircraft operated on the agreed services by the designated airlines of the other Contracting Party, even when those supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

3. Materials referred to in paragraph 2 of this Article may be required to be kept under customs supervision or control.

4. The regular airborne equipment, as well as the materials and supplies retained on board the aircraft of either Contracting Party, may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of that other Contracting Party. In such case they may be placed under the supervision of the said authorities up to such time as they are reexported or otherwise disposed of in accordance with customs regulations.

ARTICLE 9
Capacity Regulations

1. There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services on the specified routes.

2. In operating the agreed services, the designated airlines of each Contracting Party shall take into account the interests of the designated airlines of the other Contracting Party so as not to affect unduly the services which the latter provides on all or part of the same routes.

3. On any specified route the capacity provided by the designated airlines of one Contracting Party together with the capacity provided by the designated airlines of the other Contracting Party shall be maintained in reasonable relationship to the requirements of the public for air transport on that route.

4. The agreed services provided by the designated airlines of each Contracting Party shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to the current and foreseeable traffic demands to and from the territory of the Contracting Party designating the airlines. The carriage of traffic embarked or disembarked in the territory of the other Contracting Party to and from points on the specified routes in the territories of States other than that designating the airlines shall be of supplementary character. The right of such airlines to carry traffic between points of the specified routes located in the territory of the other Contracting Party and points in third countries shall be exercised in the interests of an orderly development of international air transport in such a way that the capacity is related to:

a) the traffic demand to and from the territory of the Contracting Party designating the airlines;

b) the traffic demand existing in the areas through which the agreed services pass, taking account of local and regional air services; and

c) the requirements of through airline operation.

ARTICLE 10
Tariffs

1. Each Contracting Party shall allow prices for air services to be established by each designated airline based upon commercial considerations in the marketplace. Intervention by the Contracting Parties shall be limited to:

a) prevention of predatory or discriminatory prices or practises;

b) protection of consumers from prices that are unduly high or restrictive because of the abuse of a dominant position; and

c) protection of airlines from prices that are artificially low because of direct or indirect governmental subsidy or support.

2. Each Contracting Party may require notification to or filing with its aeronautical authorities of prices proposed to be charged to or from its territory by airlines of both Contracting Parties. Notification or filing by the airlines of both Contracting Parties may be required no more than 60 days before the proposed date of effectiveness. In individual cases, notification or filing may be permitted on shorter notice than normally required.

3. Neither Contracting Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by (a) an airline of either Contracting Party for international air services between territories of the Contracting Parties, or (b) an airline of one Contracting Party for international air services between the territory of the other Contracting Party and any other country, including in both cases transportation on an interline or intra-line basis. If either Contracting Party believes that any such price is inconsistent with the considerations set forth in paragraph 1 of this Article, it shall request consultations and notify the other Contracting Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than thirty (30) days after receipt of the request, and the Contracting Parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the Contracting Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Contracting Party shall use its best efforts to put that agreement into effect. Without mutual agreement, that price shall go into or continue in effect.

ARTICLE 11
Establishment of Airline Representative Offices

1. The designated airlines of each Contracting Party shall have the right to establish representative offices in the territory of the other Contracting Party. Those representative offices may include commercial, operational and technical staff.

2. The representative offices, representatives and staff shall be established in accordance with the laws and regulations in force in the territory of that other Contracting Party.

ARTICLE 12
Transfer of Revenues

Each Contracting Party shall grant to the designated airlines of the other Contracting Party the right of transfer of excess of receipts over expenditure earned by the airlines in the territory of the first Contracting Party in connection with the carriage of passengers, cargo and mail, in any freely convertible currencies in accordance with the foreign exchange regulations in force.

ARTICLE 13
Provision of Statistics

The aeronautical authorities of one Contracting Party shall supply to the aeronautical authorities of the other Contracting Party, at their request, such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airlines of the first Contracting Party. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services and the points of embarkation and disembarkation of such traffic.

ARTICLE 14
Consultation

It is the intention of both Contracting Parties that there shall be frequent consultations between the aeronautical authorities of the Contracting Parties to ensure close collaboration in all matters affecting the fulfillment of this Agreement. Either Contracting Party may request consultations, which may be through discussions or by correspondence and shall begin not later than sixty (60) days after receipt of the request, unless otherwise agreed.

Article 15
Settlement of Disputes

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavor to settle it by negotiation.

2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body; if they do not so agree, the dispute may, at the request of either Contracting Party, be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through the diplomatic channel requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of sixty (60) days. If either Contracting Party fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organization may, at the request of either Contracting Party, appoint an arbitrator or arbitrators as the case requires. In such case, the third arbitrator shall be a national of a third State and shall act as president of the arbitral tribunal.

3. The Contracting Parties shall comply with any decision given under paragraph 2 of this Article.

4. If and so long as either Contracting Party or a designated airline of either Contracting Party fails to comply with the requirements of paragraph 3 of this Article, the other Contracting Party may limit or revoke any right which it has granted by virtue of this Agreement.

ARTICLE 16
Amendment

1. If either Contracting Party considers it desirable to amend any provisions of this Agreement, it may at any time request consultation with the other Contracting Party. Such consultation may be through discussions or by correspondence, and shall begin within a period of sixty (60) days from the date of receipt of the request. Any amendments so agreed shall come into force when they have been confirmed by an exchange of diplomatic notes.

2. Amendments of the Annex may be made by direct agreement between the aeronautical authorities of the Contracting Parties and shall come into effect when confirmed by an exchange of diplomatic notes.

ARTICLE 17
Multilateral Agreement

If, after entry into force of this Agreement, both Contracting Parties become party to a multilateral agreement that addresses matters covered by this Agreement, they shall consult to determine whether this Agreement should be revised to take into account the multilateral agreement.

ARTICLE 18
Termination

Either Contracting Party may at any time give notice in writing through diplomatic channel to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case this Agreement shall be terminated twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgment of receipt by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

ARTICLE 19
Registration

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

ARTICLE 20
Entry into Force

This agreement shall be applied provisionally from the date of signature. It shall enter into force on the date of an exchange of diplomatic notes confirming that all domestic procedures required for the entry into force of this Agreement by both Contracting Parties have been completed.

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

Done in duplicate at Luxembourg on this 27th day of September, 2000 in the Korean, French 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 GRAND DUCHY OF LUXEMBOURG

ANNEX

A. The airlines designated by the Government of the Republic of Korea shall be entitled to operate scheduled international air services in both directions on routes specified hereafter:

Points of origin	Intermediate points	Points of destination	Points beyond
Points in the Republic of Korea	Points to be specified later	Points in the Grand Duchy of Luxembourg	Points to be specified later

B. The airlines designated by the Government of the Grand Duchy of Luxembourg shall be entitled to operate scheduled international air services in both directions on routes specified hereafter:

Points of origin	Intermediate points	Points of destination	Points beyond
Points in the Grand Duchy of Luxembourg	Points to be specified later	Points in the Republic of Korea	Points to be specified later

C. The designated airlines of both Contracting Parties may, on all or any flights, omit calling at any of the above points provided that the agreed services on the route begin at the points of origin in the respective countries.

D. Specification of intermediate points and beyond points shall be subject to an agreement between the aeronautical authorities of the two Contracting Parties.

[FRENCH TEXT – TEXTE FRANÇAIS]

ACCORD

ENTRE

LE GOUVERNEMENT DE LA RÉPUBLIQUE DE CORÉE

ET

LE GOUVERNEMENT DU GRAND DUCHÉ DE LUXEMBOURG

RELATIF AU TRANSPORT AERIEN

Le Gouvernement de la République de Corée et le Gouvernement du Grand Duché de Luxembourg, ci-après dénommés les "Parties Contractantes";

Etant Parties à la Convention relative à l'Aviation Civile Internationale ouverte à la signature à Chicago le sept décembre 1944;

Désirant conclure un accord en vue d'établir et d'opérer des services aériens entre et au-delà de leurs territoires respectifs; et

Désirant assurer le plus haut degré de sécurité et de sûreté dans le transport aérien international;

sont convenus de ce qui suit:

ARTICLE 1
Définitions

Pour l'application du présent Accord, et à moins que le contexte n'en dispose autrement, le terme :

a) "Convention" désigne la Convention relative à l'aviation civile internationale ouverte à la signature à Chicago le sept décembre 1944, et comprend toute annexe adoptée en vertu de l'Article 90 de ladite Convention ainsi que toute modification des annexes ou de la Convention, adoptée en vertu des Articles 90 et 94 de celle-ci, pourvu que ces annexes et modifications aient sorti leurs effets pour les deux Parties Contractantes ou aient été ratifiées par celles-ci;

b) "autorités aéronautiques" désigne, dans le cas de la République de Corée, le Ministre de la Construction et des Transports et, dans le cas du Grand Duché de Luxembourg, le Ministre responsable de l'Aviation Civile ou, dans les deux cas, toute autre personne ou autorité habilitée à exercer les fonctions qu'exercent actuellement lesdites autorités;

c) "entreprise de transport aérien désignée" désigne une entreprise de transport aérien qui a été désignée et autorisée conformément à l'Article 3 du présent Accord;

d) "tarifs" signifie les prix à payer pour le transport des passagers et des marchandises, ainsi que les conditions auxquelles ces prix s'appliquent, y compris les prix et conditions relatifs aux services d'agences et autres services auxiliaires, mais à l'exclusion des rémunérations et des conditions de transport du courrier;

e) "territoire" en relation avec un Etat possède la signification lui attribuée par l'Article 2 de la Convention;

f) "service aérien", "service aérien international", "entreprise de transport aérien" et "escale non commerciale" ont la signification qui leur est attribuée par l'Article 96 de la Convention;

g) "capacité" utilisé en relation avec un aéronef désigne la charge utile de cet aéronef disponible sur une route aérienne ou une partie de route aérienne;

h) "capacité" utilisé en relation avec un service convenu désigne la charge utile de l'aéronef utilisé pour ce service multiplié par la fréquence des vols effectués par cet aéronef sur une période, une route aérienne ou une section de route aérienne donnée; et

i) "Annexe" désigne l'Annexe au présent Accord, ou telle qu'elle sera susceptible d'être ultérieurement amendée conformément aux dispositions de l'Article 16 du présent Accord. L'Annexe constitue une partie intégrante du présent Accord et, à moins de disposition explicite du contraire, toute référence à l'Accord inclura une référence à l'Annexe.

ARTICLE 2
Octroi de droits

1. Chaque Partie Contractante accorde à l'autre Partie Contractante les droits définis par le présent Accord pour permettre aux entreprises de transport aériens désignées d'établir et d'opérer les services aériens internationaux réguliers sur les routes spécifiées dans l'Annexe au présent Accord. Ces services et routes sont ci-après respectivement dénommés les "services convenus" et les "routes spécifiées".

2. Sous réserve des dispositions du présent Accord, la ou les entreprises de transport aérien désignées par l'une et l'autre Partie Contractante jouiront dans le cadre de l'opération des services spécifiés des droits suivants :

a) survoler le territoire de l'autre Partie Contractante sans toutefois y atterrir;

b) faire des escales non commerciales sur le territoire de l'autre Partie Contractante; et

c) d'embarquer et de débarquer des passagers, des marchandises et du courrier à tout point faisant partie des routes spécifiées et sous réserve des dispositions reprises à l'Annexe.

3. Rien dans le paragraphe 2. du présent Article ne saurait être interprété comme conférant à une entreprise de transport aérien désignée de l'une des Parties Contractantes le droit d'embarquer sur le territoire de l'autre Partie Contractante des passagers, des marchandises ou du courrier pour les transporter à destination d'un autre point du territoire de cette autre Partie Contractante.

ARTICLE 3
Désignation des entreprises de transport aérien

1. Chaque Partie Contractante aura le droit de désigner, par note écrite adressée à l'autre Partie Contractante, une ou plusieurs entreprises de transport aérien pour l'exploitation des services convenus sur les routes spécifiées.

2. A la réception d'une telle désignation, les autorités aéronautiques de l'autre Partie Contractante, sous réserve des dispositions des paragraphes 3. et 4. du présent Article, accorderont sans délai à la ou aux entreprises de transport aérien désignées les autorisations d'exploitation appropriées.

3. Les autorités aéronautiques d'une Partie Contractante pourront exiger des entreprises de transport aérien désignées de l'autre Partie Contractante de leur apporter la preuve qu'elle sont qualifiées pour satisfaire aux conditions définies par les lois et règlements normalement et raisonnablement appliqués par ces autorités à l'exploitation de services aériens internationaux conformément aux dispositions de la Convention.

4. Chaque Partie Contractante a le droit de refuser d'accepter la désignation d'entreprises de transport aérien, de refuser l'accord des autorisations d'exploitation définies au paragraphe 2. du présent Article, ou d'imposer toutes conditions qu'elle estimera nécessaires à l'exercice par les entreprises de transport aérien désignées des droits spécifiés à l'Article 2 du présent Accord, et en tout état de cause dès lors que cette Partie Contractante n'est pas satisfaite que la propriété et le contrôle effectif de ces entreprises de transport aérien se trouvent dans la Partie Contractante désignant les entreprises de transport aérien ou aux mains de citoyens de cette Partie Contractante.

5. Les entreprises de transport aérien désignées et autorisées conformément aux paragraphes 1. et 2. du présent Article pourront commencer l'exploitation des services convenus, à condition que la capacité soit réglée conformément à l'Article 9 du présent Accord et que les tarifs établis conformément aux dispositions de l'Article 10 du présent Accord soient applicables pour ce qui concerne ces services.

ARTICLE 4
Révocation et suspension de l'autorisation d'exploitation

1. Chaque Partie Contractante aura le droit de révoquer une autorisation d'exploitation ou de suspendre l'exercice des droits spécifiés à l'Article 2 du présent Accord accordés aux entreprises de transport aérien désignées par l'autre Partie Contractante, ou d'imposer les conditions qu'elles estimeront nécessaires à l'exercice de ces droits :

   a) dès lors qu'elle ne serait pas satisfaite que la propriété et le contrôle effectif de ces entreprises de transport aérien se trouvent dans la Partie Contractante qui les a désigné ou aux mains de citoyens de cette Partie Contractante; ou

   b) si ces entreprises de transport aérien ne se conforment pas aux lois ou aux règlements généralement appliqués par la Partie Contractante accordant ces droits; ou

   c) si, dans l'exploitation des services, les entreprises de transport aérien enfreignent d'une quelconque autre manière les conditions énoncées dans le présent Accord.

2. A moins que la révocation immédiate, la suspension ou l'imposition des conditions mentionnées au paragraphe 1er de cet Article soit essentielle pour empêcher de nouvelles infractions aux lois et règlements, ce droit ne sera exercé qu'après consultation avec l'autre Partie Contractante.

ARTICLE 5
Applicabilité des lois et règlements

1. Les lois et règlements de l'une des Parties Contractantes régissant l'entrée dans, le séjour dans ou la sortie de son territoire d'aéronefs affectés à un service aérien international ou le survol de ce territoire par ces aéronefs seront appliqués aux aéronefs des entreprises de transport aérien désignées de l'autre Partie Contractante et seront dûment respectés par la ou les entreprises de transport aérien de l'autre Partie Contractante lors de l'arrivée sur, du séjour dans et du départ du territoire de la première Partie Contractante .

2. Les lois et règlements de l'une des Parties Contractantes régissant l'entrée dans, le séjour dans, le transit par ou la sortie de son territoire des passagers, personnels navigants, fret, et courrier, ainsi que celles concernant les formalités d'entrée et de sortie, de douane et de devises, les formalités sanitaires et la quarantaine seront appliqués aux passagers, équipages, fret et courrier transportés par les appareils des entreprises de transport aérien désignées par l'autre Partie Contractante lors de leur entrée dans, transit par et départ de et séjour dans le territoire de la première Partie Contractante.

ARTICLE 6
Sécurité

1. Les certificats de navigabilité, certificats de compétence et licences délivrés ou validés par l'une des Parties Contractantes, et non encore périmés, seront reconnus comme valables par l'autre Partie Contractante. Chacune des Parties Contractantes se réserve cependant le droit de ne pas reconnaître comme valables, pour ce qui concerne le survol de son propre territoire, les certificats de compétence et licences accordés à ou validés pour ses propres ressortissants par l'autre Partie Contractante ou par un quelconque autre Etat.

2. Chaque Partie Contractante peut demander des consultations au sujet des normes de sécurité adoptées par l'autre Partie Contractante dans des domaines qui se rapportent aux infrastructures aéronautiques, aux équipages, aux aéronefs ou à leur exploitation par les entreprises de transport aérien désignées. Si, à la suite de telles consultations, une des Parties Contractantes constate que l'autre Partie Contractante n'adopte ni n'assure effectivement le suivi de normes de sécurité dans l'un de ces domaines qui soient au moins égales aux normes minimales en vigueur conformément à la Convention, la première Partie Contractante avisera l'autre Partie Contractante de ces conclusions et des démarches qui sont estimées nécessaires afin de se conformer à ces normes minimales, et cette autre Partie Contractante prendra les mesures correctives qui s'imposent. Chacune des Parties Contractantes se réserve le droit de refuser, de révoquer ou d'imposer des limites à l'autorisation d'exploitation ou l'autorisation technique accordée à une ou plusieurs entreprises de transport aérien désignées par l'autre Partie Contractante, dès lors que l'autre Partie Contractante manque à prendre les mesures appropriées endéans une période de temps raisonnable.

3. Toute mesure appliquée par l'une des Parties Contractantes aux termes des dispositions du paragraphe 2. de cet article se verra immédiatement abandonnée dès lors que les faits l'ayant induite cesseront d'exister.

ARTICLE 7
Sûreté de l'aviation

1. En accord avec leurs droits et obligations aux termes du droit international, les Parties Contractantes réaffirment que leur obligation de protéger, dans leurs rapports mutuels, la sûreté de l'aviation civile contre les actes d'intervention illicite, fait partie intégrante du présent Accord. Sans limitation quant à la généralité de leurs droits et obligations aux termes du droit international, les Parties Contractantes agiront notamment en conformité avec les dispositions évoquées par la Convention relative aux infractions et à certains autres actes survenant à bord des aéronefs, signée à Tokyo le 14 septembre 1963, de la Convention pour la répression de la capture illicite d'aéronefs, signée à La Haye le 16 décembre 1970, et de la Convention pour la répression d'actes illicites dirigés contre la sécurité de

l'aviation civile, signée à Montréal le 23 septembre 1971, et le Protocole pour la répression de tout acte de violence sur les aéroports assurant le service aérien international, signé à Montréal le 24 février 1988, et tout autre accord multilatéral relatif à la sûreté de l'aviation et auquel les deux Parties Contractantes deviendront membres.

2. Les Parties Contractantes s'accordent mutuellement, sur demande, toute l'assistance nécessaire pour prévenir les actes de capture illicite d'aéronefs civils et d'autres actes illicites dirigés contre la sécurité de tels aéronefs, leurs passagers et équipages, des aéroports et des installations de navigation aérienne, ainsi que toute autre menace pour la sûreté de l'aviation civile.

3. Les Parties Contractantes, dans leurs rapports mutuels, se conforment aux dispositions relatives à la sûreté de l'aviation établies par l'Organisation de l'Aviation Civile Internationale et qui sont désignées comme annexes à la Convention, dans la mesure où de telles dispositions s'appliquent aux Parties Contractantes; elles exigent des exploitants d'aéronefs immatriculés par elles, ou des exploitants qui ont le siège principal de leur exploitation ou leur résidence permanente sur leur territoire, et des exploitants d'aéroport situés sur leur territoire, qu'ils se conforment à ces dispositions relatives à la sûreté de l'aviation.

4. Chaque Partie Contractante s'engage à ce que ces exploitants d'aéronefs soient tenus d'observer les dispositions de sûreté de l'aviation, dont référence au paragraphe 3. de cet article, que l'autre Partie Contractante prescrit pour l'entrée sur, le départ de, ou lors du séjour sur son territoire. Chacune des Parties Contractantes prendra des mesures adéquates pour assurer sur son territoire la protection des aéronefs et l'inspection des passagers, des équipages, de leurs bagages à main et des bagages de soute, ainsi que du fret, avant et au cours de l'embarquement et du chargement. Chaque Partie Contractante examine aussi avec diligence et dans un esprit positif toute demande que lui adresse l'autre Partie Contractante en vue d'obtenir que des mesures de sûreté spéciales soient prises pour protéger ses aéronefs ou les passagers contre une menace spécifique.

5. Lorsqu'un incident ou une menace d'un incident de capture illicite d'aéronefs civils ou tout autre acte illicite dirigé contre la sécurité de tels aéronefs, leurs passagers et équipages, des aéroports et des installations de navigation aérienne est commis, les Parties Contractantes s'entraident en facilitant les communications et toutes autres mesures appropriées, destinées à mettre fin avec rapidité et sécurité à l'acte ou à la menace d'acte.

ARTICLE 8

Droits de douane et autres charges semblables

1. Les aéronefs exploités sur des lignes aériennes internationales par les entreprises de transport aérien désignées des deux Parties Contractantes, ainsi que leurs équipements normaux, les pièces de rechange, y compris moteurs d'avions, carburants et lubrifiants et provisions de bord de ces aéronefs (y compris les alcools, tabacs et autres produits destinés à la vente aux passagers, en quantité limitée, au cours du vol), seront exemptés de l'ensemble des droits de douane, accises, frais d'inspection et autres charges similaires lors de l'arrivée sur le territoire de l'autre Partie Contractante, le tout conformément aux dispositions légales et règlements en vigueur de chacune des Parties Contractantes, à condition que ces équipements et produits demeurent à bord de l'aéronef jusqu'à ce qu'ils soient réexportés.

2. Les articles suivants seront également exempts des mêmes droits de douane, accises et charges, le tout conformément aux dispositions légales et réglementaires en vigueur au sein de chacune des Parties Contractantes, à l'exception des charges correspondant au service rendu :

(a) les provisions de bord embarquées sur le territoire d'une Partie Contractante, endéans les limites définies par les autorités compétentes de cette Partie Contractante, et destinées à être utilisées à bord des aéronefs engagés dans l'exploitation des services convenus avec l'autre Partie Contractante;

(b) les pièces de rechange, y compris moteurs d'avions, introduites sur le territoire de l'une des Parties Contractantes en vue de l'entretien ou de la réparation des aéronefs utilisés pour les services convenus par les entreprises de transport aérien désignées de l'autre Partie Contractante; et

(c) les carburants, lubrifiants et fournitures techniques consommables destinées au service des aéronefs opérant sur les services convenus par les entreprises de transport aérien de l'autre Partie Contractante, même si ces fournitures sont destinées à être utilisées sur un trajet en survol du territoire de la Partie Contractante sur laquelle elles ont été embarquées.

3. Les matériels auxquels il est fait référence au paragraphe 2. du présent Article pourront être soumis à une surveillance ou à un contrôle douaniers.

4. L'équipement normal des aéronefs, de même que les fournitures et provisions de bord et autres articles à bord des aéronefs de chacune des Parties Contractantes ne pourront être déchargés sur le territoire de l'autre Partie Contractante qu'avec l'accord des autorités douanières de l'autre Partie Contractante. Ce matériel pourra dans ce cas être placé sous la surveillance desdites autorités jusqu'au moment de leur réexportation ou de leur liquidation conforme aux règlements douaniers.

ARTICLE 9
Capacités

1. Les entreprises de transport aérien désignées des deux Parties Contractantes bénéficieront de possibilités justes et égales pour l'exploitation des services convenus sur les routes spécifiées.

2. Dans l'exploitation des services convenus, les entreprises de transport aérien désignées par l'une des Parties Contractantes tiendront compte des intérêts des entreprises de transport aérien désignées par l'autre Partie Contractante, de façon à ne pas porter indûment atteinte aux services que celles-ci assurent sur la totalité ou sur une partie de la même route.

3. Sur toutes les routes spécifiées, la capacité fournie par les entreprises de transport désignées par l'une des Parties Contractantes ensemble avec celle fournie par les entreprises de transport aérien désignées par l'autre Partie Contractante se trouveront en relation raisonnable avec les besoins du public en matière de transport aérien sur cette route.

4. Les services convenus fournis par les entreprises de transport aérien désignées par chacune des Parties Contractantes devront avoir comme principal objectif la fourniture, selon un facteur de remplissage raisonnable, d'une capacité alignée sur la demande courante et prévisible de trafic à partir de et en direction du territoire de la Partie Contractante désignant les entreprises de transport aérien. Le transport de trafic embarqué et débarqué sur le territoire de l'autre Partie Contractante vers et à partir de points convenus sur les routes spécifiées situés dans des Etats autres que celui désignant les entreprises de transport aérien n'auront qu'un caractère complémentaire. Le droit de ces entreprises de transport aérien de transporter du trafic entre des points situés sur les routes spécifiées situés sur le territoire de l'autre Partie Contractante et des points situés sur celui d'Etats tiers sera exercé dans l'intérêt d'un bon développement du transport aérien international, de telle manière que la capacité soit liée :

(a) à la demande de trafic à partir de et en direction du territoire de la Partie Contractante désignant les entreprises de transport aérien;

(b) à la demande de trafic existant dans les régions par lesquelles par les services convenus opèrent en tenant compte des services aériens régionaux et locaux; et

(c) aux exigences d'opérations aériennes directes.

ARTICLE 10
Tarifs

1. Chaque Partie Contractante admettra qu'un tarif relatif aux services aériens sera établi par chacune des entreprises de transport aérien désignées, sur base des spécificités commerciales du marché. Toute intervention de la part des Parties Contractantes se limitera à:

(a) la prévention de pratiques ou de prix abusifs ou discriminatoires;

(b) la protection des consommateurs contre des prix indûment élevés ou restrictifs pratiqués en raison d'une position dominante; et

(c) la protection des entreprises de transport aérien contre des prix artificiellement bas en raison de l'apport de subventions ou d'assistance gouvernementales directes ou indirectes.

2. Chacune des Parties Contractantes pourra demander que soient notifiés ou que soient déposés auprès de ses autorités aéronautiques, les tarifs proposés en direction ou à partir de son territoire par les entreprises de transport aérien des deux Parties Contractantes. Cette notification ou ce dépôt par les entreprises de transport aérien des deux Parties Contractantes ne pourront être exigés plus de 60 jours avant la date proposée pour leur prise d'effet. Dans des cas particuliers, la notification ou le dépôt pourront être autorisés dans des délais plus courts que ceux normalement admis.

3. Aucune des Parties Contractantes ne pourra prendre de mesures unilatérales destinées à empêcher la mise en application ou la poursuite de l'application d'un tarif proposé ou appliqué par (a) une entreprise de transport aérien de l'une des Parties Contractantes pour des services aériens internationaux entre les territoires respectifs des deux Parties Contractantes, ou (b) une entreprise de transport aérien de l'une des Parties Contractantes pour des services aériens internationaux entre le territoire de l'autre Partie Contractante et un quelconque pays tiers, y compris dans les deux cas le transport sur base inter-lignes ou intra-lignes. Au cas où l'une ou l'autre Partie Contractante estime qu'un tel tarif est incompatible avec les dispositions énoncées au paragraphe 1. du présent Article, elle pourra demander des consultations et notifier le plus rapidement possible l'autre Partie Contractante quant aux raisons ayant donné naissance à son désaccord. Ces consultations devront être tenues trente (30) jours au plus tard après réception de la demande afférente, et les Parties Contractantes coopéreront pour la collecte des informations nécessaires en vue d'une résolution raisonnable de ce problème. Au cas où les Parties Contractantes parviennent à un accord concernant un tarif pour lequel une notification de non satisfaction avait été émise, chaque Partie

Contractante fera en sorte de procéder à l'application de cet accord. Sans accord de part et d'autre, ce tarif entrera en vigueur, ou son application sera poursuivie.

ARTICLE 11
Etablissement de Bureaux de Représentation des Entreprises de Transport Aérien

1. Les entreprises de transport aérien désignées de chacune des Parties Contractantes seront habilitées à établir des bureaux de représentation sur le territoire de l'autre Partie Contractante. Ces bureaux pourront comprendre du personnel commercial, opérationnel et technique.

2. Les bureaux de représentation, les représentants et le personnel y afférent seront établis conformément aux lois et règlements en vigueur sur le territoire de l'autre Partie Contractante.

ARTICLE 12
Transfert de Revenus

Chaque Partie Contractante accorde aux entreprises de transport aérien désignées de l'autre Partie Contractante le droit de transférer l'excédent des recettes sur les dépenses réalisées par lesdites entreprises sur son territoire en rapport avec le transport de passagers, de fret et de courrier, et cela en toute devise convertible librement et conformément aux réglementations sur les changes alors en vigueur.

ARTICLE 13
Fourniture de Statistiques

Les autorités aéronautiques de chacune des Parties Contractantes fourniront aux autorités aéronautiques de l'autre Partie Contractante, et à leur demande, tels rapports ou autres états statistiques qui pourront être raisonnablement demandés, en vue d'évaluer les capacités fournies sur les services convenus par les entreprises de transport aérien désignées de la première Partie Contractante. Ces rapports

comprendront toutes les informations nécessaires afin de déterminer le trafic transporté par ces entreprises de transport aérien sur les services convenus, ainsi que les points d'embarquement et de débarquement de ce trafic.

ARTICLE 14
Consultations

L'une et l'autre Partie Contractante conviennent de ce que des consultations fréquentes auront lieu entre leurs autorités aéronautiques aux fins d'assurer une collaboration étroite pour toutes les matières affectant la bonne exécution du présent Accord. L'une et l'autre des Parties Contractantes pourra demander des consultations lesquelles, pourront se faire par voie de discussions directes ou par correspondance, et devront débuter dans un délai maximum de soixante (60) jours à compter de la date de la demande, à moins qu'il en est convenu autrement.

ARTICLE 15
Règlement de différends

1. Si un quelconque différend naît entre les Parties Contractantes au sujet de l'interprétation ou de l'application du présent Accord, les Parties Contractantes s'efforceront tout d'abord de le régler par voie de négociations.

2. Au cas où les Parties Contractantes ne pourraient parvenir à un accord par la voie de négociations, elles pourront décider de soumettre le différend à une tierce personne ou partie; si cela n'est pas le cas, le différend pourra à la demande de l'une ou l'autre Partie Contractante être soumis à la décision d'un tribunal composé de trois arbitres, chacune des Parties Contractantes désignant l'un d'entre eux et le troisième étant désigné par les deux arbitres déjà nommés. Chacune des Parties Contractantes désignera un arbitre dans un délai de soixante (60) jours de la réception par l'une des Parties Contractantes d'un avis communiqué par la voie diplomatique par l'autre Partie Contractante demandant l'arbitrage du différend; le troisième arbitre devra être désigné endéans un délai supplémentaire de

soixante (60) jours. Au cas où l'une ou l'autre Partie Contractante manquerait à désigner un arbitre endéans le délai imparti, ou que le troisième arbitre n'est pas nommé endéans le délai imparti pour ce faire, le Président du Conseil de l'Organisation de l'Aviation Civile Internationale pourra à la demande de l'une des Parties Contractantes désigner un ou des arbitres, selon le cas nécessaire. En ce cas, le troisième arbitre sera un ressortissant d'un Etat tiers, et il fera fonction de président de la cour arbitrale.

3. Les Parties Contractantes s'engagent à se conformer à toute décision prise conformément aux dispositions du paragraphe 2. du présent Article.

4. Si, et aussi longtemps que l'une ou l'autre Partie Contractante ou une entreprise de transport aérien désignée de l'une ou l'autre Partie Contractante manque à se conformer aux exigences du paragraphe 3. du présent Article, l'autre Partie Contractante sera habilitée à limiter, ou à révoquer tout droit accordé par elle en vertu du présent Accord.

ARTICLE 16
Modifications

1. Au cas où l'une ou l'autre Partie Contractante désire amender quelconques dispositions du présent Accord, elle pourra à tout moment demander une consultation avec l'autre Partie Contractante. Cette consultation pourra s'effectuer par la voie de discussions directes ou par correspondance, et devra débuter endéans soixante (60) jours de la réception de la demande afférente. Tout amendement convenu de la sorte sortira ses effets dès lors qu'il aura été confirmé par un échange de notes diplomatiques.

2. Les amendements apportés à l'Annexe pourront être convenus par accord direct entre les autorités aéronautiques des Parties Contractantes, et entreront en vigueur dès lors qu'ils auront été confirmés par un échange de notes diplomatiques.

ARTICLE 17
Accords Multilatéraux

Au cas où, postérieurement à l'entrée en vigueur du présent Accord, les deux Parties Contractantes deviennent parties à un accord multilatéral relatif à des matières régies par le présent Accord, elles procéderont à des consultations en vue de déterminer si le présent Accord doit subir des modifications en vue de prendre en compte un tel accord multilatéral.

ARTICLE 18
Dénonciation

Chacune des Parties Contractantes peut, à tout moment, notifier par écrit à l'autre Partie Contractante, par la voie diplomatique, sa décision de dénoncer le présent Accord. Cette notification sera envoyée simultanément à l'Organisation de l'Aviation Civile Internationale. Dans ce cas l'Accord prendra fin douze (12) mois après la date de réception de la notification par l'autre Partie Contractante, à moins que ladite notification ne soit retirée d'un commun accord avant l'expiration de cette période. En l'absence d'un accusé de réception de la part de l'autre Partie Contractante, la notification sera réputée avoir été reçue quatorze (14) jours après la date de sa réception par l'Organisation de l'Aviation Civile Internationale.

ARTICLE 19
Enregistrement

Le présent Accord, de même que toute modification du même, sera enregistré auprès de l'Organisation de l'Aviation Civile Internationale.

ARTICLE 20
Entrée en vigueur

Le présent Accord sera provisoirement applicable à partir de la date de sa signature. Il entrera en vigueur après échange entre les deux Parties Contractantes de notes diplomatiques confirmant que l'ensemble des formalités constitutionnelles nationales nécessaires à cette entrée en vigueur ont été dûment accomplies par les deux Parties Contractantes.

EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet par leur Gouvernement respectif, ont signé le présent Accord.

Fait à Luxembourg, le 27e jour de septembre 2000, en deux exemplaires originaux comportant chacun trois textes d'authenticité égale en langues coréenne, française et anglaise. En cas de divergence dans l'interprétation, le texte anglais fera foi.

POUR LE GOUVERNEMENT DE LA REPUBLIQUE DE COREE

POUR LE GOUVERNEMENT DU GRAND-DUCHE DE LUXEMBOURG

ANNEXE

A. Les entreprises de transport aérien désignées par le Gouvernement de la République de Corée seront habilitées à prester les services aériens internationaux réguliers dans les deux sens sur les routes suivantes :

Points de départ	Points intermédiaires	Points de Destination	Points au-delà
Points dans la République de Corée	Points à convenir à une date ultérieure	Point au Grand Duché de Luxembourg	Points à convenir à une date ultérieure

B. Les entreprises de transport aérien désignées par le Gouvernement du Grand Duché de Luxembourg seront habilitées à prester les services aériens internationaux réguliers dans les deux sens sur les routes suivantes :

Points de départ	Points intermédiaires	Points de Destination	Points au-delà
Points au Grand Duché de Luxembourg	Points à convenir à une date ultérieure	Points dans la République de Corée	Point à convenir à une date ultérieure

C. Les entreprises de transport aérien désignées des deux Parties Contractantes peuvent sur tout ou partie de leurs vols omettre un ou plusieurs points mentionnés ci-dessus à condition que les services convenus sur cette route commencent sur les points de leur pays respectif.

D. Les points intermédiaires ou situés au-delà feront l'objet d'un accord entre les autorités aéronautiques des deux Parties Contractantes.

[KOREAN TEXT – TEXTE CORÉEN]

대한민국 정부와 룩셈부르크대공국 정부간의 항공업무에 관한 협정

대한민국 정부와 룩셈부르크대공국 정부(이하 "체약당사자"라 한다)는,

1944년 12월 7일 시카고에서 서명을 위하여 개방된 국제민간항공협약의 당사자로서,

각자의 영역간 및 그 이원의 항공업무의 개설과 운영을 목적으로 한 협정을 체결하기를 희망하며,

국제항공운송에 있어서 최고 수준의 안전을 확보하기를 희망하여,

다음과 같이 합의하였다.

제 1 조
정 의

이 협정의 목적을 위하여 문맥상 달리 요청되지 아니하는 한,

가. "협약"이라 함은 1944년 12월 7일 시카고에서 서명을 위하여 개방된 국제민간항공협약을 말하며, 동 협약 제90조에 따라 채택된 부속서와 동 협약 제90조 및 제94조에 따른 부속서 또는 협약의 개정중 양 체약당사자에 대하여 유효한 것을 포함한다.

나. "항공당국"이라 함은 대한민국의 경우에는 건설교통부장관, 룩셈부르크대공국의 경우에는 민간항공에 관하여 책임을 지는 장관, 또는 양국 모두 동 당국에 의하여 현재 행사되는 기능을 수행하도록 권한을 부여받는 기타 개인 또는 기관을 말한다.

다. "지정항공사"라 함은 이 협정 제3조에 따라 지정되고 허가된 항공사를 말한다.

라. "운임"이라 함은 여객 및 화물의 운송을 위하여 지불되는 요금과 그러한 요금이 적용되는 조건을 말하며, 대리점 및 기타 부수적 업무에 대한 요금과 조건을 포함하나, 우편물의 운송에 대한 보수와 조건은 제외된다.

마. 국가와 관련하여 "영역"은 협약 제2조에서 부여된 의미를 가진다.

바. "항공업무", "국제항공업무", "항공사" 및 "비운수목적의 착륙"은 협약 제96조에서 각각 이들에 부여된 의미를 가진다.

사. 항공기와 관련하여 "수송력"이라 함은 어느 노선 또는 그 노선의 일부에서의 동 항공기의 적재 가능량을 말한다.

아. 합의된 업무와 관련하여 "수송력"이라 함은 그러한 업무에 사용되는 항공기의 수송력에 대하여 일정기간동안 어느 노선 또는 그 노선의 일부에 운항되는 동 항공기의 운항횟수를 곱한 것을 말한다.

자. "부속서"라 함은 이 협정의 부속서 또는 이 협정 제16조의 규정에 따라 개정되는 부속서를 말한다. 부속서는 이 협정의 불가분의 일부를 구성하며, 협정에 대한 모든 언급은 달리 명시적으로 규정된 경우를 제외하고는 부속서에 대한 언급을 포함한다.

제 2 조
권리의 부여

1. 각 체약당사자는 타방체약당사자의 지정항공사들이 이 협정의 부속서에 명시된 노선에서 정기국제항공업무를 개설·운영할 수 있도록 하기 위하여 이 협정에 명시된 권리를 타방체약당사자에게 부여한다. 이러한 업무 및 노선은 이하 각각 "합의된 업무" 및 "특정노선"이라 한다.

2. 이 협정의 규정에 따라 각 체약당사자의 지정항공사들은 특정노선에서 합의된 업무를 운영함에 있어서 다음 각목의 권리를 가진다.

가. 타방체약당사자의 영역을 통과하는 무착륙 비행

나. 타방체약당사자의 영역안에서의 비운수목적의 착륙, 그리고

다. 이 협정의 부속서에 포함된 규정에 따른 특정노선상의 지점에서의 여객·화물 및 우편물의 적재와 하륙

3. 이 조 제2항은 타방체약당사자의 영역안에서 그 타방체약당사자의 영역의 다른 지점을 목적지로 하여 유상 또는 전세로 운송되는 여객·화물 또는 우편물을 적재하는 권리를 일방체약당사자의 지정항공사들에게 부여하는 것으로 간주되지 아니한다.

제 3 조

항공사의 지정

1. 각 체약당사자는 타방체약당사자에게 특정노선에서 합의된 업무를 운영할 목적으로 1개 이상의 항공사를 서면으로 지정할 권리를 가진다.

2. 타방체약당사자의 항공당국은 그러한 지정을 접수하는 즉시 이 조 제3항 및 제4항의 규정에 따라 그 지정항공사들에게 지체없이 적절한 운항허가를 부여한다.

3. 일방체약당사자의 항공당국은 타방체약당사자의 지정항공사들에 대하여 협약의 규정과 일치하며 국제항공업무의 운영에 통상적으로 그리고 합리적으로 적용되는 법령에 따라 그 항공당국에 의하여 부과되는 조건을 동 지정항공사들이 이행할 능력이 있음을 입증하도록 요구할 수 있다.

4. 각 체약당사자는 지정항공사들에 대한 실질적 소유와 실효적 지배가 그 지정항공사들을 지정하는 체약당사자 또는 그 체약당사자의 국민에게 속하여 있음을 확신하지 못하는 경우에는, 항공사 지정의 수락 또는 이 조 제2항에 언급된 운항허가의 부여를 거부하거나, 지정항공사들이 이 협정 제2조에 명시된 권리를 행사하는 데 필요한 것으로 간주되는 조건을 부과하는 권리를 가진다.

5. 수송력이 이 협정 제9조에 따라 규제되고 이 협정 제10조에 따라 설정된 운임이 합의된 업무에 대하여 유효하게 되는 경우에는, 이 조 제1항 및 제2항의 규정에 따라 지정되고 허가되는 항공사는 그러한 합의된 업무의 운영을 시작할 수 있다.

제 4 조
권리의 취소 및 정지

1. 각 체약당사자는 다음 각목의 경우 타방체약당사자에 의하여 지정된 항공사들에 대하여 운항허가를 취소하거나 이 협정 제2조에 명시된 권리의 행사를 정지시키거나 그러한 권리의 행사에 필요한 것으로 간주되는 조건을 부과할 권리를 가진다.

가. 지정된 항공사들에 대한 실질적 소유와 실효적 지배가 항공사를 지정하는 체약당사자 또는 그 체약당사자의 국민에게 속하여 있음을 확신하지 못하는 경우

나. 그러한 권리를 부여하는 체약당사자의 법령을 지정항공사들이 준수하지 못하는 경우, 또는

다. 지정항공사들이 달리 이 협정의 규정을 준수하지 못하는 경우

2. 이 조 제1항에 언급된 취소, 정지 또는 조건의 부과의 즉각적인 실시가 더 이상의 법령의 침해를 방지하기 위하여 필요불가결하지 아니하는 한, 각 체약당사자는 타방체약당사자와 협의한 이후에만 그러한 권리를 행사한다.

제 5 조
법령의 적용

1. 국제항행에 사용되는 항공기의 자국 영역에의 입국·체류·출국이나 자국 영역에서의 상공비행을 규율하는 일방체약당사자의 법령은 타방체약당사자의 지정항공사들의 항공기에 적용되며, 전기 일방체약당사자의 영역에의 입국 또는 출국시와 체류중에 타방체약당사자의 항공사 또는 항공사들에 의하여 준수된다.

2. 여객·승무원·화물 및 우편물의 자국 영역에의 입국·체류·통과 또는 출국을 규율하는 출입국·이민·세관·통화·의료 및 검역조치의 절차에 관한 일방체약당사자의 법령은 타방체약당사자의 지정항공사들의 항공기가 전기 일방체약당사자의 영역에 입국·통과 또는 출국시에 그리고 그 일방체약당사자의 영역안에 있는 동안에 그 지정항공사들의 항공기에 의하여 운송되는 여객·승무원·화물 또는 우편물에 적용된다.

제 6 조
안 전

1. 어느 일방체약당사자에 의하여 발급되었거나 유효한 것으로 인정된 감항증명서·자격증명서 및 면허증은 그 유효기간동안 타방체약당사자에 의하여 유효한 것으로 인정된다. 그러나 각 체약당사자는 타방체약당사자 또는 기타 국가에 의하여 자국 국민에게 부여되거나 자국 국민을 위하여 유효한 것으로 인정된 자격증명서 및 면허증을 자국 영역의 상공의 비행목적상 유효한 것으로 인정하지 아니할 권리를 보유한다.

2. 어느 일방체약당사자는 항공시설·승무원·항공기와 지정항공사의 운항과 관련하여 타방체약당사자가 유지하고 있는 안전기준에 관하여 협의를 요청할 수 있다. 그러한 협의후, 만일 타방체약당사자가 협약에 따라 제정될 수 있는 최소한의 기준과 적어도 동등한 이러한 분야에서의 안전기준 및 요건을 효과적으로 유지하거나 실행하고 있지 아니함을 일방체약당사자가 발견하는 경우, 타방체약당사자는 그러한 관찰결과와 위의 최소한의 기준에 합치될 필요가 있다는 것을 통보받으며, 적절한 시정조치를 취한다. 각 체약당사자는 타방체약당사자가 합리적인 기간내에 그러한 적절한 조치를 취하지 아니하는 경우, 타방체약당사자가 지정한 항공사에 대한 운항허가 또는 기술적 허가를 철회·취소 또는 제한할 권리를 가진다.

3. 이 조 제2항에 따라 취하여진 일방체약당사자의 조치는 그러한 조치를 취하게 된 근거가 더 이상 존재하지 아니하게 되는 경우에는 즉시 중지된다.

제 7 조

항공안전

1. 체약당사자는 불법적인 간섭행위로부터 민간항공의 안전을 상호 보호할 의무가 이 협정의 불가분의 일부를 구성함을 국제법상의 권리 및 의무에 일치하게 재확인한다. 체약당사자는, 국제법상의 일반적인 권리 및 의무를 제한하지 아니하면서, 특히 1963년 9월 14일 동경에서 서명된 항공기내에서 범한 범죄 및 기타행위에 관한 협약, 1970년 12월 16일 헤이그에서 서명된 항공기의 불법납치억제를 위한 협약, 1971년 9월 23일 몬트리올에서 서명된 민간항공의 안전에 대한 불법적행위의 억제를 위한 협약 및 1988년 2월 24일 몬트리올에서 서명된 국제민간항공에 사용되는 공항에서의 불법적 폭력행위의 억제를 위한 의정서, 또는 양 체약당사자가 당사자가 되는 항공안전에 관한 기타 협약의 규정에 따라 행동한다.

2. 체약당사자는 요청에 따라 민간항공기의 불법납치행위와 항공기·여객·승무원·공항 및 항공운항시설의 안전에 반하는 기타 불법행위와 민간항공안전에 대한 기타 위협을 방지하기 위하여 필요한 모든 지원을 상호 제공한다.

3. 체약당사자는 그들간의 상호관계에 있어서 국제민간항공기구에 의하여 확립되고 협약의 부속서로 지정된 항공안전규정이 체약당사자에게 적용가능한 범위까지, 동 항공안전규정에 따라 행동한다. 체약당사자는 자국에 등록된 항공기 운항자나, 주영업소 또는 영구거주지가 자국 영역안에 있는 항공기 운항자와, 자국 영역안에 있는 공항의 운영자가 위의 항공안전규정에 따라 행동하도록 요구한다.

4. 각 체약당사자는 타방체약당사자가 자국 영역에의 입국 및 출국이나 체류를 위하여 요구하는 이 조 제3항에 규정된 항공안전규정을 위의 항공기 운항자들에게 준수하도록 요구할 수 있다는 것에 합의한다. 각 체약당사자는 항공기를 보호하고, 탑승 또는 적재 이전과 탑승 또는 적재중에 여객 및 승무원과 그들의 소지품·수화물·화물 및 항공기저장품을 검사하기 위하여 자국 영역안에서 적절한 조치가 효과적으로 취하여지는 것을 보장한다. 각 체약당사자는 특정위협에 대처하고 합리적인 특별안전조치를 취하기 위한 타방체약당사자로부터의 요청을 호의적으로 고려한다.

5. 민간항공기의 불법납치사건이나 그러한 사건의 위협 또는 그러한 항공기·여객·승무원·공항 또는 항공운항시설의 안전에 대한 기타 불법행위가 발생하는 경우, 체약당사자는 그러한 사건 또는 사건의 위협을 신속하고 안전하게 종료시키기 위하여 통신 및 기타 적절한 조치를 원활하게 함으로써 상호 지원한다.

제 8 조

관세 및 기타 유사부과금

1. 체약당사자의 지정항공사들에 의하여 국제항공업무에 운영되는 항공기와 동 항공기에 적재된 정규장비, 엔진을 포함한 부품, 연료 및 윤활유 공급품과 항공기저장품(한정된 수량으로 비행중에 여객에게 판매될 주류·담배 및 기타 제품을 포함한다)은 그러한 장비와 공급품이 재반출될 때까지 항공기에 적재되어 있는 경우에는 타방체약당사자의 영역에의 반입시에 각 체약당사자의 유효한 법령규정에 따라 모든 관세·검사료 및 기타 유사부과금이 면제된다.

2. 제공된 용역에 상응하는 부과금을 제외하고는, 다음 각목의 경우에도 각 체약당사자의 유효한 법령의 규정에 따라 동일한 관세·검사료 및 부과금이 면제된다.

가. 어느 일방체약당사자의 권한있는 당국이 설정한 범위안에서 그 일방체약당사자의 영역안에서 적재되고, 합의된 업무에 종사하는 타방체약당사자의 항공기에 적재되어 사용되는 항공기저장품

나. 합의된 업무에 사용되는 항공기의 정비 또는 보수를 위하여 타방체약당사자의 지정항공사들에 의하여 어느 일방체약당사자의 영역에 반입되는 엔진을 포함한 부품

다. 항공기에 적재되어 타방체약당사자의 영역의 상공운항구간에 사용되는 경우를 포함하여, 타방체약당사자의 지정항공사들에 의하여 합의된 업무에 운영되는 항공기에 공급되는 연료, 윤활유 및 소모성 기술공급품

3. 이 조 제2항에 언급된 물품은 세관의 감시 또는 통제하에 보관되도록 요청될 수 있다.

4. 일방체약당사자의 항공기에 탑재된 정규항공장비와 물품 및 공급품은 타방체약당사자의 세관당국의 허가가 있는 경우에 한하여 타방체약당사자의 영역안에서 하륙될 수 있다. 그러한 경우 장비·물품 및 공급품은 재반출되거나 세관규정에 따라 달리 처분되는 때까지 그 세관당국의 감시하에 둘 수 있다.

제 9 조

수송력 규정

1. 양 체약당사자의 지정항공사들은 특정노선에서 합의된 업무를 운영함에 있어서 공정하고 균등한 기회가 부여된다.

2. 각 체약당사자의 지정항공사들은 합의된 업무를 운영함에 있어서 타방체약당사자의 지정항공사들의 이익을 고려하여 타방체약당사자의 지정항공사들이 동일 노선의 전부 또는 일부에서 제공하는 업무에 부당하게 영향을 미치지 아니하도록 한다.

3. 특정노선에서 일방체약당사자의 지정항공사들이 제공하는 수송력과 타방체약당사자의 지정항공사들이 제공하는 수송력은 그 노선에서의 항공운송에 대한 공공의 요구와 합리적인 연관성이 유지되어야 한다.

4. 각 체약당사자의 지정항공사들에 의하여 제공되는 합의된 업무는 그 항공사들을 지정하는 체약당사자의 영역을 목적지 또는 출발지로 하여 현재 및 예상되는 운송수요에 적합한 수송력을 합리적인 적재율로 공급하는 것을 우선적인 목표로 한다. 타방체약당사자의 영역안에서 적재되거나 하륙되는 운송으로서 항공사들을 지정한 국가를 제외한 국가들의 영역안의 특정노선상의 지점을 목적지 또는 출발지로 하는 운송은 보충

적인 성격을 갖는다. 타방체약당사자의 영역안에 위치한 특정노선상의 지점과 제3국안의 지점간을 운송하는 그 지정항공사들의 권리는 국제항공운송의 질서있는 발전을 위하여 수송력이 다음 각목의 사항과 연계되어 행사되어야 한다.

가. 항공사들을 지정하는 체약당사자의 영역을 목적지 및 출발지로 하는 운송수요

나. 지방 및 지역 항공업무를 고려하여 합의된 업무가 통과하는 지역에 현존하는 항공수요, 그리고

다. 직통항로의 운영요건

제 10 조
운 임

1. 각 체약당사자는 각 지정항공사가 시장에서의 상업적 고려에 기초하여 항공업무의 가격을 설정하도록 허용한다. 체약당사자에 의한 개입은 다음 각목의 경우에 한한다.

가. 약탈적 또는 차별적인 가격이나 관행의 방지

나. 지배적 지위의 남용으로 인하여 부당하게 높거나 제한적인 가격으로부터의 소비자의 보호

다. 직접적 또는 간접적인 정부보조나 지원으로 인하여 인위적으로 낮은 가격으로부터의 항공사의 보호

2. 각 체약당사자는 양 체약당사자의 항공사들이 자국 영역에서 출발하거나 도착하는 경우에 부과되는 가격을 자국의 항공당국에 통지 또는 제출하도록 요구할 수 있다. 양 체약당사자의 항공사에 의한 통지 또는 제출은 제시된 유효일전 60일 이내에 행하여지도록 요구될 수 있다. 개별적인 경우에 있어서 통지 및 제출은 통상적으로 요구되는 것보다 단축된 통고로 허용될 수 있다.

3. 어느 체약당사자도 노선간 또는 노선내에 기초한 운송의 두가지 경우를 포함하여 (가) 체약당사자의 영역간의 국제항공업무를 위한 일방체약당사자의 항공사에 의하여, 또는 (나) 타방체약당사자의 영역과 기타 국가간의 국제항공업무를 위한 일방체약당사자의 항공사에 의하여 부과되는 것으로 제시되거나 부과된 가격의 개시 또는 지속을 방해하는 일방적 행위를 취하여서는 아니된다. 어느 일방체약당사자가 그러한 가격이 이 조 제1항에 규정된 고려사항과 일치하지 아니한다고 믿을 경우에는, 협의를 요청하며 가능한 한 빨리 타방체약당사자에게 불만족의 이유를 통지한다. 이러한 협의는 요청을 접수한 후 적어도 30일 이내에 개시되며, 체약당사자는 문제의 합리적인 해결에 필요한 정보를 확보하는 데 협력한다. 통지된 불만족에 따른 가격과 관련하여 체약당사자가 합의하는 경우, 각 체약당사자는 그러한 합의가 발효되도록 최선을 다한다. 상호합의가 없을 경우, 통지된 불만족에 따른 가격은 유효하게 되거나 계속하여 유효하다.

제 11 조
항공사 지점의 설치

1. 각 체약당사자의 지정항공사들은 타방체약당사자의 영역안에 지점을 설치할 권리를 가진다. 그러한 지점에는 영업·운영 및 기술 직원이 포함될 수 있다.

2. 지점은 그 대표 및 직원을 포함하여 타방체약당사자의 영역안에서 유효한 법령에 따라 설치된다.

제 12 조
수입의 송금

각 체약당사자는 타방체약당사자의 지정항공사들이 여객·화물 및 우편물의 운송과 관련하여 지정항공사가 전기 각 체약당사자의 영역안에서 지출을 초과하여 수취한 수입을 유효한 외국환규정에 따라 자유태환성통화로 송금할 수 있는 권리를 부여한다.

제 13 조
통계자료의 제공

일방체약당사자의 항공당국은 타방체약당사자의 항공당국의 요청에 따라 전기 일방체약당사자의 지정항공사들이 합의된 업무를 위하여 제공하는 수송력을 검토하기 위한 목적에서 합리적으로 요구될 수 있는 정기적인 또는 기타의 통계자료를 타방체약당사자의 항공당국에 제공한다. 그러한 자료는 합의된 업무를 위하여 그 지정항공사들이 수송하는 운송량과 그러한 운송의 출발 및 기착 지점들을 결정하기 위하여 필요한 모든 정보를 포함한다.

제 14 조
협 의

양 체약당사자는 이 협정의 이행에 영향을 미치는 모든 문제에 있어서 긴밀한 협력을 확보하기 위하여 체약당사자의 항공당국간에 수시로 협의하도록 한다. 어느 일방체약당사자는 토의 또는 서신교환을 통한 협의를 요청할 수 있으며, 달리 합의되지 아니하는 한 요청을 접수한 후 60일 이내에 협의를 시작한다.

제 15 조
분쟁의 해결

1. 이 협정의 해석 또는 적용과 관련하여 체약당사자간에 분쟁이 발생하는 경우, 체약당사자는 우선 교섭을 통하여 이를 해결하도록 노력한다.

2. 체약당사자가 교섭에 의한 해결에 실패하는 경우, 체약당사자는 어떤 개인이나 기관에게 분쟁에 대한 결정을 위임하는 데 합의할 수 있다. 체약당사자가 그와 같이 합의하지 아니하는 경우, 어느 일방체약당사자의 요청으로 분쟁은 3인의 재판관으로 구성되는 중재재판소에 결정을 위하여 회부될 수 있으며, 재판관은 각 체약당사자에 의하여 1인씩 지명되고, 제3의 재판관은 이들 지명된 2인에 의하여 임명된다. 각 체약당사자는 타방체약당사자로부터 외교경로를 통하여 분쟁의 중재재판을 요청하는 통지를 접수하는 날부터 60일 이내에 각각 재판관을 지명하며, 제3의 재판관은 그로부터 60일 이내에 임명된다. 어느 일방체약당사자가 정하여진 기간내에 재판관을 지명하지 못하거나, 또는 정하여진 기간내에 제3의 재판관이 임명되지 못하는 경우에는 일방체약당사자의 요청에 따라 국제민간항공기구의 이사회 의장이 사안이 요구하는 바에 따라 재판관을 임명할 수 있다. 이 경우, 제3의 재판관은 제3국의 국민이어야 하며 중재재판소의 장이 된다.

3. 체약당사자는 이 조 제2항에 따른 결정을 준수한다.

4. 어느 일방체약당사자나 어느 일방체약당사자의 지정항공사가 이 조 제3항의 요구조건을 준수하지 아니하는 경우, 타방체약당사자는 이 협정에 따라 부여한 권리를 제한하거나 취소할 수 있다.

제 16 조
개 정

1. 어느 일방체약당사자가 이 협정의 규정의 개정이 바람직하다고 판단하는 경우, 언제든지 타방체약당사자와의 협의를 요청할 수 있다. 그러한 협의는 토의 또는 서신교환을 통하여 할 수 있으며, 요청의 접수일부터 60일의 기간내에 시작된다. 합의된 개정은 외교각서의 교환에 의하여 확인되는 때에 발효한다.

2. 체약당사자의 항공당국간의 직접합의에 의하여 부속서를 개정할 수 있으며, 그 개정은 외교각서의 교환에 의하여 확인되는 때에 발효한다.

제 17 조

다자조약

양 체약당사자가 이 협정의 발효후 이 협정이 규율하는 사안을 대상으로 하는 다자조약의 당사자가 되는 경우, 양 체약당사자는 그 다자조약을 고려하여 이 협정의 개정 여부를 결정하기 위하여 협의한다.

제 18 조

종 료

어느 일방체약당사자는 이 협정의 종료결정을 외교경로를 통하여 서면으로 타방체약당사자에게 언제든지 통지할 수 있다. 그러한 통지는 국제민간항공기구에 동시에 전달된다. 그러한 경우 이 협정은 타방체약당사자가 통지를 접수하는 날부터 12월이 경과하기 전에 합의에 의하여 협정의 종료통지가 철회되지 아니하는 한, 접수후 12월이 경과한 후에 종료된다. 타방체약당사자에 의한 접수의 확인이 없는 경우에는, 국제민간항공기구가 통지를 접수하는 날부터 14일후에 통지가 접수된 것으로 본다.

제 19 조

등 록

이 협정과 이 협정의 개정은 국제민간항공기구에 등록된다.

제 20 조

발 효

이 협정은 서명일부터 잠정적으로 적용된다. 이 협정은 양 체약당사자가 이 협정의 발효에 필요한 모든 국내절차가 완료되었음을 확인하는 외교각서를 교환하는 날에 발효한다.

이상의 증거로, 아래 서명자는 그들 각자의 정부로부터 정당하게 권한을 위임받아 이 협정에 서명하였다.

2000년 9 월 27 일, 룩셈부르크에서 동등하게 정본인 한국어·불어 및 영어로 각 2부씩 작성하였다. 해석상의 상위가 있을 경우에는 영어본이 우선한다.

대한민국 정부를 위하여

룩셈부르크대공국 정부를 위하여

부 속 서

1. 대한민국 정부의 지정항공사들에게 아래 특정노선에 대한 양방향의 정기국제항공운송 업무를 운영할 자격이 부여된다.

출발지점	중간지점	도착지점	이원지점
대한민국내 지점	추후 지정되는 지점	룩셈부르크 대공국내 지점	추후 지정되는 지점

2. 룩셈부르크대공국 정부의 지정항공사들에게 아래 특정노선에 대한 양방향의 정기국제항공운송 업무를 운영할 자격이 부여된다.

출발지점	중간지점	도착지점	이원지점
룩셈부르크 대공국내 지점	추후 지정되는 지점	대한민국내 지점	추후 지정되는 지점

3. 양 체약당사자의 지정항공사들은 노선상의 합의된 업무가 각국의 출발지점에서 시작되는 한, 일부 또는 모든 운항에 있어서 상기 지점중 어느 지점에 대한 기착을 생략할 수 있다.

4. 중간지점 및 이원지점의 지정은 양 체약당사자의 항공당국간의 합의에 따른다.

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