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*

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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 de Brunei Darussalam relatif à l'encouragement et à la protection réciproque des investissements. Bandar Seri Begawan, 14 novembre 2000

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[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 투자는 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
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