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**Republic of Korea
and
Libya**

**Agreement between the Republic of Korea and the Great Socialist People's Libyan Arab
Jamahiriya for the promotion and protection of investments. Tripoli, 21 September 2006**

Entry into force: *28 March 2007, in accordance with article 12*

Authentic texts: *Arabic, English and Korean*

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**République de Corée
et
Libye**

**Accord entre la République de Corée et la Grande Jamahiriya arabe libyenne populaire et
socialiste sur la promotion et la protection des investissements. Tripoli, 21 septembre
2006**

Entrée en vigueur : *28 mars 2007, conformément à l'article 12*

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**AGREEMENT BETWEEN
THE REPUBLIC OF KOREA AND
THE GREAT SOCIALIST PEOPLE'S LIBYAN ARAB
JAMAHIRIYA
FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Republic of Korea and the Great Socialist People's Libyan Arab Jamahiriya (hereinafter referred to as "the Contracting Parties"),

Desiring to intensify economic cooperation between the two States,

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

Recognising that the promotion and protection of investments on the basis of this Agreement will stimulate business initiative in this field,

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement:

- (a) "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:
- (i) movable and immovable property and any other property rights such as mortgages, liens, leases or pledges,
 - (ii) shares in, stocks and debentures of, and any other form of participation in a company or any business enterprise and rights or interest derived there from,
 - (iii) claims to money or to any performance under a contract having an economic value,
 - (iv) 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
 - (v) 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;

/ (b) "returns"

- (b) "returns" means the amounts yielded by investments and, in particular, though not exclusively, includes profit, interest, capital returns, dividends, royalties and all kinds of fees;
- (c) "investors" means any natural or juridical persons of either Contracting Party, who invest in the territory of the other Contracting Party:
 - (i) the term "natural persons" means natural persons having the nationality of the former Contracting Party in accordance with its laws, and
 - (ii) 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;
- (d) "territory" means the territory of the Republic of Korea or the territory of Great Socialist People's Libyan Arab Jamahiriya 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; and
- (e) "freely convertible currency" means 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, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.

/ ARTICLE 3

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 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, whichever is more favourable to investors.

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment which is fair and equitable and 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 this Agreement related to most favoured treatment given to investors from either Contracting Party or a third party shall not oblige one Contracting Party to provide the other Contracting Party with any favoured treatment or privileges resulting from:

- (a) any economic or customs union, duty-free zone, common market, any similar international agreement or any kind of regional economic organization in which either Contracting Party is a member or likely to be a member in future; or
- (b) any international agreement or agreements related to the tax system in whole or in part.

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 situation 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

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 the latter Contracting Party's forces or authorities; or
- (b) destruction of their property by the latter Contracting Party's 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 latter 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 subject 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 purposes 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 the date when the expropriation was made or before the date when the 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.

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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 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 of the total or partial liquidation of investments;
- (c) funds in repayment of loans related to investments;
- (d) salaries and wages or any financial rewards to nationals of the other Contracting Party who are allowed to work in connection with investments in its territory after the deduction of due fees and taxes.
- (e) compensation pursuant to Articles 4 and 5.

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

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 in the territory of the other Contracting Party, other Contracting Party shall recognize:

- (a) 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.

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2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

Article 8

Settlement of Disputes between the Contracting Parties

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

2. If a dispute cannot thus be settled within a period of six (6) months from the date on which the matter was raised by either Contracting Party, it shall upon the request of either Contracting Party be submitted to an arbitration tribunal.

3. Such arbitration tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as their chairman to be appointed by the two Contracting Parties. Such members shall be appointed within three (3) months, and such chairman within five (5) months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.

4. If the periods specified in paragraph 3 above have not been observed, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President should make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he, too, is prevented from discharging the said function, the member of the Court next in seniority who is not a national of either Contracting Party should make the necessary appointments.

5. The arbitration tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding. Each Contracting Party shall bear the cost of its own member and of its representatives in the arbitration proceedings; the cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitration tribunal may make a different regulation concerning costs. In all other respects, the arbitration tribunal shall determine its own procedure.

/ 6. The

6. The chairman of the arbitration tribunal shall be a national of a third State with which both Contracting Parties maintain diplomatic relations.

Article 9

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

1. Disputes concerning investments between a Contracting Party and an investor of the other Contracting Party 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 to 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 any dispute cannot be settled within six (6) months from the date on which the dispute has been raised by either Party and if the investor of the other Contracting Party waives the rights to initiate any proceedings under paragraph 2 of this Article with respect to the same dispute, it shall, at the request of the investor of the other Contracting Party, be submitted to an ad hoc Arbitral Tribunal in accordance with the provisions of this Article.

4. 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 party shall appoint one member of the Tribunal. These two members shall then select a national of a third State, who, on approval of both 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.

5. If, within the periods specified in paragraph (4) of this Article, the necessary appointments have not been made, a request may be made by either party to the Secretary-General of the International Center for Settlement of Investment Disputes (ICSID) to make such appointments.

/ 6. The

6. The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding on each party. The award shall be enforced in accordance with domestic law.

7. The Arbitral Tribunal shall determine its own procedure.

8. Each 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 parties. The Arbitral Tribunal may make a different regulation concerning costs.

9. In the event of both Contracting Parties having become Contracting States of the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States, disputes under this Article between the parties in dispute shall be submitted for arbitration under the aforementioned Convention, unless the parties in dispute agree otherwise; each Contracting Party herewith declares its acceptance of such a 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, or by general principles of international law, 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 its 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. Each Contracting Party shall observe any other obligation it may have entered into with regard to investments in its territory by investors of the other Contracting Party.

/ ARTICLE 11

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 has arisen 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 date on which the Contracting Parties have notified each other in writing that their respective legal requirements for the entry into force of this Agreement have been fulfilled.
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 termination of this Agreement, the provisions of Articles 1 to 11 of this Agreement shall remain in force for a further period of ten (10) years from the date of the termination.

DONE in duplicate at Tripoli on the twenty-first day of September 2006, in the Korean, Arabic and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF KOREA



FOR THE GREAT SOCIALIST PEOPLE'S
LYBIAN ARAB JAMAHIRIYA

