

AGREEMENT ON INVESTMENT
BETWEEN
THE REPUBLIC OF KOREA
AND
THE REPUBLIC OF ICELAND,
THE PRINCIPALITY OF LIECHTENSTEIN
AND THE SWISS CONFEDERATION

Agreement on Investment
between the Republic of Korea and the Republic of Iceland,
the Principality of Liechtenstein and the Swiss Confederation

The Republic of Korea (hereinafter referred to as “Korea”), on the one side, and the Republic of Iceland, the Principality of Liechtenstein and the Swiss Confederation (hereinafter referred to as “the EFTA Parties”), on the other side (hereinafter collectively referred to as “the Parties”),

RECOGNISING that mutually enhanced investment opportunities will stimulate the flow of private capital and the economic development of the Parties;

INTENDING to create and maintain favourable conditions for investment by investors of one side in the territory of the other side and to provide protection for such investors and their investments;

RECALLING the concomitant signature of a Free Trade Agreement between Korea and the EFTA States (hereinafter referred to as “the Free Trade Agreement”);

CONFIRMING that this Agreement forms part of the instruments establishing a free trade area between Korea and the EFTA States, as referred to in Article 1.4 of the Free Trade Agreement;

HAVE AGREED as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement:

1. “Company” means any entity constituted or organized under the applicable law, whether or not for profit, and whether private or government owned or controlled, including any corporation, trust, partnership, sole proprietorship, branch, joint venture or other association;
2. “Investment” means any kind of asset and particularly:
 - (a) a company;
 - (b) movable and immovable property as well as any other rights *in rem*, such as mortgages, liens, and pledges;
 - (c) shares, stocks or any other kind of equity participation in a company;

- (d) bonds, debentures, loans and other forms of debt;
 - (e) claims to money or to any performance associated with a company having an economic value;
 - (f) intellectual property rights, technical know-how and goodwill; or
 - (g) rights conferred pursuant to law or contract such as concessions, licences, authorisations and permits, including any concession to search for, cultivate, extract or exploit natural resources.
3. “Investment of an investor of a Party” means an investment that is owned or controlled, either directly or indirectly, by an investor of that Party.
4. “Investor of a Party” means:
- (a) a natural person having the nationality of that Party or having the right of permanent residence of that Party in accordance with its applicable laws; or
 - (b) a juridical person or any other entity, except branches, constituted or organized under the applicable law of that Party and carrying out substantial business activities there,
- making or having made an investment in the territory of another Party.

ARTICLE 2

Scope and Coverage

1. This Agreement shall apply to investors of a Party, and to their investments whether made prior to or after the entry into force of this Agreement. It does not apply to claims arising out of events which occurred prior to its entry into force.
2. Article 4 shall not apply to measures affecting trade in services, provided that the sector concerned is covered by Chapters 3 or 4 of the Free Trade Agreement.
3. The provisions of this Agreement shall be without prejudice to the rights and obligations of the Parties under other international agreements relating to investment.
4. The provisions of this Agreement shall apply to the investment relations between the EFTA Parties, on the one side, and Korea, on the other, but not to the investment relations between individual EFTA States.

ARTICLE 3

General Treatment and Protection

1. Each Party shall in accordance with the provisions of this Agreement create and maintain stable, equitable, favourable and transparent conditions for investors of the other Parties to make investments in its territory.
2. Each Party shall accord to investments of investors of another Party fair and equitable treatment and full protection and security. No Party shall impair by unreasonable or discriminatory measures their operation, management, maintenance, use, enjoyment or disposal.
3. Furthermore, each Party shall observe any written obligation it may have entered into with regard to a specific investment by an investor of another Party, which the investor could rely on in good faith when establishing, acquiring or expanding the investment.

ARTICLE 4

National Treatment and MFN Treatment

1. Each Party shall accord to investors of another Party and their investments, in relation to the establishment, acquisition, expansion, management, conduct, operation, liquidation, sale, transfer, or other disposition, of investments, treatment that is no less favourable than that it accords to its own investors and their investments (national treatment) or to investors of any third State and their investments (MFN treatment), whichever is more favourable.
2. If a Party accords special advantages to investors of any third State and their investments by virtue of a free trade agreement, customs union, or similar agreement that also provides for substantial liberalisation of investments, it shall not be obliged to accord such advantages to investors of another Party and their investments. However, upon request from another Party, it shall afford adequate opportunity to the other Parties to negotiate the benefits granted therein.
3. National treatment and MFN treatment shall apply to taxation measures subject to deviations that are necessary for the equitable and effective imposition and collection of direct taxes¹. However, if a Party accords special advantages to investors of any third State and their investments by virtue of an agreement for the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of another Party and their investments.
4. The standard of national treatment as provided for in paragraph 1 shall not apply to subsidies based on a Party's social policy or its economic development policy, even if such subsidies, directly or indirectly, favour local enterprises or

¹ Footnote 6 of Article XIV of the General Agreement on Trade in Services shall apply.

entrepreneurs. If another Party considers that such subsidies, in a particular case, have a seriously distortive effect on the investment opportunities of its own investors, it may request consultations on such matters. Such requests shall be accorded sympathetic consideration.

5. The standard of national treatment as provided for in paragraph 1, means, with respect to a sub-national entity, treatment no less favourable than the most favourable treatment accorded by that entity to investors, and to investments of investors, of the Party of which it forms a part.

ARTICLE 5

Transfers

1. Each Party shall ensure that all payments relating to an investment in its territory of an investor of another Party may be freely transferred into and out of its territory without delay. Such transfers shall include, in particular, though not exclusively:

- (a) the initial capital and additional amounts to maintain or increase the investment;
- (b) profits, interest, dividends, capital gains, royalties, fees and returns in kind;
- (c) payments made under a contract, including a loan agreement;
- (d) proceeds from the sale or liquidation of all or any part of the investment;
- (e) earnings and other remuneration of personnel engaged from abroad in connection with the investment;
- (f) payments made pursuant to Articles 13 and 14; and
- (g) payments arising under Article 16 .

2. Each Party shall further ensure that such transfers may be made in a freely convertible currency, *i.e.* a currency that is widely traded in international foreign exchange markets and widely used in international transactions. Transfers shall be able to be made at the market rate of exchange prevailing on the date of transfer.

3. It is understood that paragraphs 1 and 2 are without prejudice to the equitable, non-discriminatory and good faith application of measures:

- (a) relating to bankruptcy, insolvency or the protection of the rights of creditors;

- (b) relating to or ensuring compliance with laws and regulations:
 - (i) on the issuing, trading and dealing in securities, futures and derivatives; or
 - (ii) concerning reports or records of transfers; or
- (c) in connection with criminal offences and orders or judgements in administrative and adjudicatory proceedings.

ARTICLE 6

Temporary Safeguard Measures

1. Where, in exceptional circumstances, payments and capital movements between the Parties cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in any Party, the Party concerned may take safeguard measures with regard to capital movements that are strictly necessary for a period not exceeding six months, provided that these measures are consistent with the Articles of Agreement of the International Monetary Fund. The application of safeguard measures may be extended through their formal reintroduction.
2. The Party adopting the safeguard measures shall inform the other Parties forthwith and present, as soon as possible, a time schedule for their removal.

ARTICLE 7

Monetary and Exchange Rate Policies

Nothing in this Agreement beyond the Parties' obligations under Article 5 applies to non-discriminatory measures of general application taken by public entities in the pursuit of monetary and related credit policies or exchange rate policies.

ARTICLE 8

Key Personnel

1. Each Party shall, subject to its laws and regulations relating to the entry, stay and work of natural persons, grant investors of another Party, and key personnel who are employed by such investors or by investments of such investors, temporary entry and stay in its territory to engage in activities connected with the management, maintenance, use, enjoyment, expansion or disposal of relevant investments, including the provision of advice or key technical services.
2. Each Party shall, subject to its laws and regulations, permit investors of another Party and their investments to employ any key personnel of the investor's or

the investment's choice regardless of nationality and citizenship provided that such key personnel has been permitted to enter, stay and work in its territory and that the employment concerned conforms to the terms, conditions and time limits of the permission granted to such key personnel.

3. Each Party shall, subject to its laws and regulations, grant temporary entry and stay and provide any necessary confirming documentation to the spouse and minor children of a natural person who has been granted temporary entry, stay and authorisation to work in accordance with paragraphs 1 and 2; the spouse and minor children shall be admitted for the period of the stay of that person.

ARTICLE 9

Health, Safety and Environmental Measures

1. Nothing in this Agreement shall be construed to prevent a Party from adopting, maintaining or enforcing any measure consistent with this Agreement that is in the public interest, such as measures to meet health, safety or environmental concerns.

2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor of a Party or a non-Party. If a Party considers that another Party has offered such an encouragement, it may request consultations with that other Party and the Parties shall consult with a view to avoiding any such encouragement.

ARTICLE 10²

Prudential Measures

Paragraph 2 of Article 4.8 of the Free Trade Agreement shall apply, *mutatis mutandis*, to this Agreement.

ARTICLE 11

Transparency

Article 10.1 of the Free Trade Agreement shall apply, *mutatis mutandis*, to this Agreement.

² Article 10 was corrected by written procedure 17 March 2006.

ARTICLE 12

Reservations

1. National treatment as provided for under Article 4 shall not apply to:
 - (a) any reservation that is listed by a Party in its Annex to this Agreement;
 - (b) an amendment to a reservation covered by paragraph (a) to the extent that the amendment does not decrease the conformity of the reservation with Article 4; and
 - (c) any new reservation adopted by a Party, and incorporated into its Annex, which does not affect the overall level of commitments of that Party under this Agreement;

to the extent that such reservations are inconsistent with Article 4.

2. As part of the reviews provided for in Article 19, the Parties undertake to review the status of the reservations set out in the Annexes with a view to reducing the reservations or removing them.

3. A Party may, at any time, either upon the request of another Party or unilaterally, remove in whole or in part reservations set out in its Annex by written notification to the other Parties.

4. A Party may, at any time, incorporate a new reservation into its Annex in accordance with paragraph 1(c) by written notification to the other Parties. On receiving such written notification, the other Parties may request consultations regarding the reservation. On receiving the request for consultations, the Party incorporating the new reservation shall enter into consultations with the other Parties.

ARTICLE 13

Expropriation and Compensation

None of the Parties shall take, either directly or indirectly, measures of expropriation or nationalization, or any other measures having the same nature or the same effect, against investments of investors of another Party, unless the measures are taken in the public interest, on a non-discriminatory basis and under due process of law, and provided that provision is made for prompt, effective and adequate compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriatory action was taken or became public knowledge, whichever is earlier. The amount of compensation shall include interest at a normal commercial rate from the date of dispossession until the date of payment, be

settled in a freely convertible currency, be paid without delay and be freely transferable³.

ARTICLE 14

Compensation for Losses

The investors of a Party whose investments have suffered losses due to war or to any other armed conflict, revolution, state of emergency, rebellion, civil disturbance, or any other similar events in the territory of another Party shall be accorded by that Party treatment not less favourable than that which that Party accords for such losses to its own investors or to investors of any third State, whichever is more favourable to the investors concerned.

ARTICLE 15

Subrogation

1. If a Party or its designated agency has made a payment in accordance with a financial guarantee against non-commercial risks concerning an investment by one of its investors in the territory of another Party, the latter shall recognize the rights of the first Party or its designated agency by virtue of the principle of subrogation to the rights of the investor.
2. If a Party or its designated agency has made a payment to one of its investors and thereby entered into the rights of the investor, the latter may not make a claim based on these rights against the other Party without the consent of the first Party or its designated agency.

ARTICLE 16

Disputes between an Investor and a Party

1. If an investor of a Party considers that a measure applied by another Party is inconsistent with an obligation of this Agreement, thus causing loss or damage to the investor or its investment, the investor may request consultations with a view to resolving the matter amicably.
2. Any such matter which has not been settled within a period of six months from the date of written request for consultations may be referred to the courts or

³ It is understood that Article 13 does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the Agreement on Trade-Related Aspects of Intellectual Property Rights, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter 7 of the Free Trade Agreement.

administrative tribunals of the Party concerned or to international arbitration. In the latter event the investor has the choice between any of the following:

- (a) the International Centre for Settlement of Investment Disputes (ICSID) provided for by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on March 18, 1965, if this Convention is available;
- (b) conciliation or arbitration under the Additional Facility Rules of ICSID; or
- (c) an *ad hoc* arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. Each Party hereby gives its prior consent to the submission to international arbitration in accordance with paragraph 2 of a dispute relating to an investment made by an investor of another Party, provided that the disputing investor has given written notice of his intent to the disputing Party at least 60 days before the claim to arbitration is submitted⁴.

4. Once the investor has referred the dispute to either a national tribunal or any of the international arbitration mechanisms provided for in paragraph 2, the choice of the procedure shall be final. Furthermore, if the investor has submitted to a national tribunal a claim in relation to any written obligation a Party has entered into with regard to a specific investment made by the investor, as referred to in paragraph 3 of Article 3, the investor may no longer refer the same matter to international arbitration.

5. No Party shall prevent the disputing investor from seeking interim measures of protection, not involving the payment of damages or resolution of the substance of the matter in dispute before the courts or administrative tribunals of the disputing Party, prior to the institution of proceedings before any of the dispute settlement fora referred to in paragraph 2, for the preservation of its rights and interests.

6. An investor may not submit a dispute for resolution according to paragraph 1 if more than five years have elapsed from the date the investor first acquired or should have acquired knowledge of the events giving rise to the dispute.

7. The disputing Party shall at no time whatsoever during the process assert as a defence its immunity or the fact that the investor has received, by virtue of an insurance contract, a compensation covering the whole or part of the incurred damage.

⁴ For clarity, it is understood that the term "investment made" refers to situations where an investment is not any more in the process of being established or acquired.

8. No Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other Party does not abide by and comply with the arbitral award.

9. The arbitral award shall be final and binding for the parties to the dispute and shall be executed without delay according to the law of the Party concerned.

ARTICLE 17

Disputes between an Investor and a Party in Financial Services

1. Where an investor of a Party has given written notice to the disputing Party of its intent to submit a claim to international arbitration under Article 16 and the disputing Party invokes Article 6, 7 or 10, the disputing Party may refer the matter in writing to the Sub-Committee on Financial Services established pursuant to Article 4.20 of the Free Trade Agreement for a decision. For this matter, the Sub-Committee shall only be composed of the representatives of the disputing Party and of the investor's Party.

2. In a referral pursuant to paragraph 1, the Sub-Committee on Financial Services shall decide whether and to what extent Article 6, 7 or 10 is a valid defence to the claim of the investor. The Sub-Committee shall transmit its decision to the investor. Where the Sub-Committee finds that one of the said Articles is a valid defence, the investor shall not submit the claim to international arbitration. Where the Sub-Committee finds that none of the said Articles is a valid defence or has not reached a decision within 90 days of the receipt of the referral, the investor may proceed submitting the claim to international arbitration.

3. In the event the investor submits his claim to international arbitration, the panel shall be constituted in accordance, *mutatis mutandis*, with paragraph 4 of Article 4.21 of the Free Trade Agreement.

4. Without prejudice to paragraphs 1 to 3, Article 16 shall apply.

ARTICLE 18

Disputes between Parties

Chapter 9 of the Free Trade Agreement shall apply, *mutatis mutandis*, between the Parties to this Agreement.

ARTICLE 19

Review

With a view to progressive liberalisation of investment, the Parties shall review the investment legal framework, the investment climate and the flow of investment between their territories consistent with their commitments in international investment agreements not later than three years after the date of entry into force of this Agreement and in regular intervals thereafter.

ARTICLE 20

Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between States where like conditions prevail, or a disguised restriction on investors and investments, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Party of measures:

- (a) necessary to protect public morals or to maintain public order;
- (b) necessary to protect human, animal or plant life or health; or the environment; or
- (c) necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement.

ARTICLE 21

Committee

1. A Committee of this Agreement (hereinafter referred to as “the Committee”) is hereby established comprising representatives of each Party.
2. The Committee shall:
 - (a) supervise and review the implementation of this Agreement;
 - (b) endeavour to resolve disputes that may arise regarding the interpretation or application of this Agreement; and
 - (c) consider any other matter that may affect the operation of this Agreement.
3. The Committee shall act by consensus.

4. The Committee may decide to amend the Annexes to this Agreement. Subject to paragraph 5, it may set a date for the entry into force of such decisions.

5. If a representative of a Party in the Committee has accepted a decision subject to the fulfilment of constitutional requirements, the decision shall enter into force on the date that the last Party notifies that its internal requirements have been fulfilled, unless the decision itself specifies a later date. The Committee may decide that the decision shall enter into force for those Parties that have fulfilled their internal requirements, provided that Korea is one of those Parties. A Party may apply a decision of the Committee provisionally until such decision enters into force, subject to its constitutional requirements.

6. Except otherwise agreed by the Parties, the Committee shall meet in conjunction with the Joint Committee of the Free Trade Agreement. The Committee shall inform the Joint Committee of its activities.

7. The meetings of the Committee shall be chaired jointly by Korea and one of the EFTA Parties. The Committee shall establish its rules of procedure.

ARTICLE 22

Annexes

The Annexes to this Agreement shall form an integral part thereof.

ARTICLE 23

Amendments

1. Amendments to this Agreement other than those referred to in paragraph 4 of Article 21 shall, after approval by the Committee, be submitted to the Parties for ratification, acceptance or approval in accordance with each Party's constitutional requirements.

2. Unless the Parties agree otherwise, the amendments shall enter into force on the first day of the second month following the deposit of the last instrument of ratification, acceptance or approval.

3. The text of the amendments as well as the instruments of ratification, acceptance or approval shall be deposited with the Depositary.

ARTICLE 24

Accession

1. Any State which is a Party to the Free Trade Agreement may accede to this

Agreement, after the approval by the Committee of its accession, on terms and conditions to be agreed between the acceding State and the existing Parties. The instrument of accession shall be deposited with the Depositary.

2. In relation to an acceding State, this Agreement shall enter into force on the first day of the second month following the deposit of its instrument of accession, or the approval of the terms of accession by the existing Parties, whichever is later.

ARTICLE 25

Entry into Force

1. This Agreement is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force on the same date as the Free Trade Agreement in relation to those signatory States which by then have ratified both the Free Trade Agreement and this Agreement, provided that they have deposited their instruments of ratification, acceptance or approval with the Depositary, and that Korea is among them.

3. In relation to any EFTA Party depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, this Agreement shall enter into force on the same date as the Free Trade Agreement or, if the Free Trade Agreement has already entered into force between Korea and the EFTA Party concerned, on the first day of the second month following the deposit of its instrument.

4. If its constitutional requirements permit, any EFTA Party may apply this Agreement provisionally. Provisional application of this Agreement under this paragraph shall be notified to the Depositary.

ARTICLE 26

Withdrawal and Termination

1. Any Party may withdraw from this Agreement by means of a written notification to the Depositary. The withdrawal shall take effect six months after the date on which the notification is received by the Depositary.

2. If Korea withdraws, this Agreement shall expire on the date specified in paragraph 1.

3. In case a Party withdraws from the Free Trade Agreement, such withdrawal shall also extend to this Agreement in accordance with paragraph 1.

4. If the Free Trade Agreement is terminated, this Agreement shall terminate on the same date.

5. In respect of investments made prior to the date of any withdrawal from, or of the termination of, this Agreement, Articles 1 to 18, as well as Article 20, shall continue to be effective for a period of ten years from the date of withdrawal or termination.

ARTICLE 27

Relationship with the Swiss-Korean Investment Agreement of 1971

As long as it is in force or remains effective, this Agreement replaces and suspends the “Agreement between the Government of the Swiss Confederation and the Government of the Republic of Korea concerning the Encouragement and Reciprocal Protection of Investments” of 7 April 1971.

ARTICLE 28

Depositary

The Government of Switzerland shall act as Depositary.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Agreement.

Done at Hong Kong, this 15th day of December 2005, in a single original in the English language, which shall be deposited with the Government of Switzerland. The Depositary shall transmit certified copies to all Signatory States.

For the Republic of Iceland

For the Republic of Korea

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For the Principality of Liechtenstein

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For the Swiss Confederation

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