

THE INVESTMENT PROMOTION ACT

**Regulations made by the Minister under section 28A
of the Investment Promotion Act**

1. These regulations may be cited as the Investment Promotion and Protection Agreement (Republic of Korea) Regulations 2007.

2. In these regulations-

“Agreement” means the agreement entered into with the Government of the Republic of Korea in pursuance of section 28A of the Investment Promotion Act and set out in the Schedule to these regulations.

3. The Agreement shall come into operation on such date as specified by the Minister in a notice published in the Government *Gazette*.

Made by the Minister on 18 December 2007

SCHEDULE
(*regulation 2*)

The Government of the Republic of Mauritius and the Government of the Republic of Korea (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 reciprocal 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 purpose of this Agreement,

- (1) “investment” means every kind of asset 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 rights in rem such as mortgages, liens or pledges;
 - (b) shares, stocks and debentures, and any other form of participation in a company or any business enterprise;
 - (c) claims to money or to any performance under contract having an economic value;
 - (d) intellectual property rights such as industrial property rights, copyrights, patents, utility model patents, designs, trade-marks, trade-names, technical processes, know-how, and goodwill;
 - (e) business concessions having an economic value conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;
 - (f) goods that, under a leasing contract, are placed at the disposal of a lessee in the territory of a Contracting Party in accordance with its laws and regulations.

Any change of the form in which assets are invested or reinvested shall not affect their character as an investment.

- (2) “return” means the amount yielded by an investment and in particular, though not exclusively, profit, interest, capital gains, dividends, royalties and all kinds of fees;
- (3) “investors” means any natural or juridical persons who invest in the territory of the other Contracting Party:
 - (a) the term “natural persons” means natural persons having the nationality of that 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, associations incorporated or constituted in accordance with the laws and regulations of that Contracting Party.

- (4) “territory” means:
- (a) in the case of the Republic of Korea its territory, as well as islands and 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 respective legislation, sovereign rights or jurisdiction for the purpose of exploration and exploitation of the natural resources of such areas.
 - (b) in the case of the Republic of Mauritius:
 - (i) all the territories and islands which, in accordance with the laws of Mauritius constitute the State of Mauritius;
 - (ii) the territorial sea of Mauritius; and
 - (iii) any area outside the territorial sea of Mauritius which has been or may hereafter be designated in accordance with international law and under the laws of Mauritius, as an area, including the Continental Shelf, within which the rights of Mauritius with respect to the sea, the seabed and subsoil and their natural resources may be exercised.
- (5) “freely convertible currency” means a 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) Each Contracting Party shall use its best endeavours to grant, in accordance with its laws, the necessary permits in connection with the carrying out of such investments and, whenever necessary, licensing agreements and contracts for technical, commercial or administrative assistance.
- (3) Investments made by investors, and returns of investors in either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.
- (4) Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the operation, management, maintenance, use, enjoyments or disposal of investments in its territory by investors of the other Contracting Party.

ARTICLE 3
TREATMENT OF INVESTMENTS

- (1) Each Contracting Party shall in its territory accord to investments and 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 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.
- (3) The provisions of paragraph (1) 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:
 - (a) any international agreement or arrangement relating wholly or mainly to taxation;
 - (b) 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 agreement.
- (4) Provisions of this Agreement shall not obstruct any obligations of each Contracting Party which may have entered into consistently with this Agreement with regard to investments in its territory by investors of the other Contracting Party.

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 prejudice to paragraph (1) of this Article, investors of one Contracting Party who in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

- (a) requisitioning of their property by its forces or authorities; or
- (b) destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded restitution or adequate compensation no less favourable than that which would be accorded under the same circumstances to an investor of the other Contracting Party or to an investor of any third State. Resulting payments shall be freely transferable without undue delay.

ARTICLE 5 EXPROPRIATION

- (1) Investments of investors of one Contracting Party shall not be nationalized, expropriated or otherwise subjected to any other measures having effect equivalent to nationalization or expropriation (hereinafter referred to as “expropriation”) in the territory of the other Contracting Party except for public purpose, and against prompt, adequate and effective compensation.
- (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, and 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 realisable and be freely transferable. In both expropriation and compensation, treatment not 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 the expropriation shall have a right to prompt review, by a judicial or other independent authority of the other Contracting Party of their case.
- (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 to the extent necessary to guarantee compensation as specified under paragraph (2) to such investors of the other Contracting Party who are owners of those shares or debentures.

ARTICLE 6 TRANSFER OF INVESTMENT CAPITAL AND RETURNS

- (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) profits, capital gains, dividends, interest, royalties, fees and any other current income accruing from investments;
 - (b) proceeds accruing from the sale or the total or partial liquidation of investments;
 - (c) funds in repayment of loans related to investments;
 - (d) earnings of nationals of the other Contracting Party who are allowed to work in connection with investments in its territory;
 - (e) additional funds necessary for the maintenance or development of the existing investments;
 - (f) amounts spent for the management of the investment in the territory of the other Contracting Party;
 - (g) compensation pursuant to Articles 4 and 5.
- (2) All transfers under this Agreement shall be made in a freely convertible currency, without undue restriction and delay, at the market exchange rate which is effective for the current transactions or determined in accordance with the official rate of exchange in force on the date of transfers, whichever is more favourable to investors.

ARTICLE 7 SUBROGATION

If a Contracting Party or its authorized agency makes a payment to its own investors under an indemnity given in respect of investments in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

- (1) the assignment, whether under the law or pursuant to a legal transaction in that State, of any rights or claims from investors to the former Contracting Party or its authorized agency, and
- (2) that the former Contracting Party or its authorized agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of its own investors. The subrogated rights or claims shall not be greater than the original rights or claims of the said investors.

ARTICLE 8
SETTLEMENT OF INVESTMENT DISPUTES BETWEEN A
CONTRACTING PARTY AND AN INVESTOR
OF THE OTHER CONTRACTING PARTY

- (1) Any dispute between a Contracting Party and an investor of the other Contracting Party related to investments including expropriation or nationalization of investments shall, as far as possible, be settled by the parties to the dispute in an amicable way. The party intending to resolve such disputes through negotiations shall give written notice to the other of its intention.
- (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 the 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 the dispute cannot be settled within six months from the date on which the dispute has been raised by either party, it shall be submitted upon request of either of the parties, to the International Center for Settlement of Investment Disputes (ICSID) established by the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States.
- (4) The investor may choose to submit the dispute for resolution either
 - (a) to any competent courts or administrative tribunals of the Contracting Party, that is, party to the dispute; or
 - (b) in accordance with any applicable previously agreed dispute settlement procedures; or
 - (c) to ICSID procedure in accordance with this Article.
- (5) The award made under paragraph 4 (b) and 4 (c) of this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall ensure the recognition and enforcement of the award in accordance with its relevant laws and regulations.

ARTICLE 9
SETTLEMENT OF DISPUTES BETWEEN
THE CONTRACTING PARTIES

- (1) Any dispute between the Contracting Parties concerning the interpretation or application of the Agreement shall, if possible, be settled by negotiation through diplomatic channels.

- (2) If any dispute cannot be settled within six months, it shall at the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal in accordance with the provisions of this Article.
- (3) Such an arbitral tribunal shall be constituted for each individual case in the following way: within two months from the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. These two members shall then select a national of a third State, who on approval of the two Contracting Parties, shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two 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 also is 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 cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties. The arbitral tribunal shall determine its own procedure.

ARTICLE 10

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 his case.
- (2) If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other specific contracts is more favourable than that accorded by this Agreement, the more favourable treatment shall be accorded.
- (3) Either Contracting Party shall honour any obligation it may have entered into with regard to investments in its territory by investors of the other Contracting Party.

ARTICLE 11
APPLICATION OF THE AGREEMENT

The Agreement shall apply to 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 days after the date when the Contracting Parties notify each other that all legal requirements for its entry into force have been fulfilled.
- (2) This Agreement shall remain in force for a period of fifteen 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 receipt of the notification of expiry, the provisions of Articles 1 to 11 of this Agreement shall remain in force for a further period of twenty years from the date of the receipt of the notification of expiry.
- (4) This Agreement may be amended by mutual written consent. Any amendment 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 amendment or termination.

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

DONE in duplicate at **PORT LOUIS**, on the **18th day of June of the year 2007**, in the Korean and English languages, both texts being equally authentic.

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Hon. Ramakrishna Sithanen
Deputy Prime Minister, and
Minister of Finance and
Economic Development

H.E. Mr. Yum Ki-Syub
Ambassador Extraordinary and
Plenipotentiary

For the Government of the
Republic of Mauritius

For the Government of the
Republic of Korea