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## THE PEOPLE'S REPUBLIC OF CHINA

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Signed at Beijing March 28, 1994

Entered into force September 28, 1994

### Article 1 Personal Scope

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

### Article 2 Taxes Covered

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions its local authorities, or public communities irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are:

(a) In the republic of Korea;

(i) the income tax:

(ii) the corporation tax ; and

(iii) the inhabitant tax

(hereinafter referred to as " Korean Tax");

(b) In the People's Republic of China

(i) the individual income tax;

(ii) the income tax for enterprises with for enterprises with foreign investment and foreign enterprise ; and

(iii) the local income tax;

(hereinafter referred to as " Chinese tax")

4. This Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

### Article 3 General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:

(a) the term "Korea" means the Republic of Korea; when used in geographical sense, means all the territory of the Republic of Korea, including its territorial sea, in which the Korean laws relating to taxation apply, and any area beyond its territorial sea, within which the Republic of Korea has sovereign right of exploration for and exploitation of resources of the sea-bed and its sub-soil and superjacent water resources in accordance with international law;

(b) the term " China" means the People"s Republic of China ; when used in geographical sense, means all the territory of the People"s Republic of China, including its territorial sea, in which the Chinese laws relating to taxation apply, and any area beyond its territorial sea, within which the People"s Republic of China has sovereign rights of exploration for and exploitation of resources of the sea-bed and its sub-soil and superjacent water resources in accordance with international law;

(c) the terms "a Contracting State" and "the other Contracting State" mean Korea or China, as the context requires ;

(d) the term "tax" means Korean tax or Chinese tax, as the context requires;

(e) the term "person" includes an individual, a company and any other body of persons;

(f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(h) the term "national" means;

(i) all individuals possessing the nationality of a Contracting State;

(ii) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;

(i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(j) the term "competent authority" means;

(i) in the case of the Republic of Korea, the Minister of Finance or his authorized representative;

(ii) in the case of China, the State Tax Bureau or its authorized representative:

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

#### Article 4 Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head office, place of effective management, of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then this case shall be determined as follows:

(a) He shall be deemed to be a resident of the State in which he has a permanent home available to him; If he has a permanent home available to him in both Agreement States, he shall be deemed to be a resident of the Agreement State with which his personal and economic relations are closer (centre of vital interests);

(b) If the Agreement State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Agreement State in which he has an habitual abode;

(c) If he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

(d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of this Agreement to such person.

#### Article 5 Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially;

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;

3. The term " permanent establishment " likewise encompasses;

(a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site , project or activities continue for a period of more than 6 months;

(b) the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other engaged personnel in the other Contracting State, provided that such activities continue for the same project or a connected project for a period or periods aggregating more than 6 months within any 12 month period.

4. Notwithstanding the provisions of paragraphs 1 to 3, the term "permanent establishment" shall be deemed not to include;

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 6 applies acting in a Contracting State on behalf of an enterprise of the other Contracting State has, and habitually exercises an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in that other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## Article 6 Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

## Article 7 Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting State, unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an

apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

#### Article 8 Shipping and Air Transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of head office or effective management of the enterprise is situated.

2. If the place of head office or effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency.

#### Article 9 Associated Enterprises

##### Where

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

## Article 10 Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed :

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;

b) 10 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply to the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Contracting State.

## Article 11 Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that



other Contracting State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, Interest arising in a Contracting State and derived by the Government of the other Contracting State including local authorities thereof, the central bank of the other Contracting State or any financial institution performing functions of a governmental nature on by any resident of the other Contracting State with respect to debt-claims guaranteed or indirectly financed by the Government of that other Contracting State including local authorities thereof, the central bank of that other Contracting State or any financial institution performing functions of a government nature shall be exempt from tax in the first-mentioned Contracting State.

4. The term "interest" as used in this Article means income from debt-claims of every kind whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is the Government of that Contracting State, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

## Article 12 Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.
2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific works including cinematography films and films or tapes for radio or television broadcasting, any patent, know-how, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is the Government of that Contracting State, a local authority or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## Article 13 Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other Contracting State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State which the place of head office or effective management of the enterprise is situated.
4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that Contracting State.
5. Gains from the alienation of any property other than that referred to in paragraphs 1 to 4 shall be taxable only in the Contracting State of which the alienator is a resident.

#### Article 14 Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State except in one of the following circumstances, when such income may also be taxed in the other Contracting State;
  - (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State;
  - (b) if his stay in the other Contracting State is for a period or periods exceeding in the aggregate 183 days in the calendar year concerned ; in that case, only so much of the income as is derived from his activities performed in that other Contracting State may be taxed in that other Contracting State.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities by physicians, lawyers, engineers , architects, dentists and accountants.

## Article 15 Dependent Personal Services

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period concerned; and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated by an enterprise of a Contracting State in international traffic, shall be taxable only in the Contracting State in which the place of head office or effective management of the enterprise is situated.

## Article 16 Director's Fees

Director's fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

## Article 17 Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such

accrues not to the entertainer or athlete himself but to another person, that income may , notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived by entertainers or athletes who are residents of a Contracting State from the activities exercised in the other Contracting State under a plan of cultural exchange between the Governments of both Contracting States shall be exempt from tax in that other Contracting State.

#### Article 18 Pensions

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.

2. Notwithstanding the provisions of paragraph 1, pensions paid and other similar payments made by the Government of a Contracting State or a local authority thereof under a public welfare scheme of the social security system of that Contracting State shall be taxable only in that Contracting State.

#### Article 19 Government Service

1.

a) Remuneration, other than a pension, paid by the Government of a Contracting State, a local authority or organization thereof to an individual in respect of services rendered to the Government of that Contracting State a local authority or organization thereof, in the discharge of the functions of a governmental nature, shall be taxable only in that Contracting State.

b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other Contracting State and the individual is a resident of that other Contracting State who:

(i) is a national of that State; or

(ii) did not become a resident of that other Contracting State solely for the purpose of rendering the services.

2.

a) Any pension paid by, or out of funds created by, the Government of a Contracting State, a local authority or organization thereof to an individual in respect of services rendered to the Government of that State, a local

authority or organization thereof, in the discharge of the functions of a government nature, shall be taxable only in that Contracting State.

b) however, such person shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other Contracting State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by the Government of a Contracting State or a local authority thereof.

#### Article 20 Students and Trainees

A student, business apprentice or trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training shall be exempt from tax in that first-mentioned State on the following payments or income received or derived by him for the purpose of his maintenance, education or training;

(a) payments derived from sources outside that Contracting State for the purpose of his maintenance, education, study, research or training;

(b) grants, scholarships or awards supplied by the Government, or a scientific, educational, cultural or other tax-exempt organization ; and

(c) income derived from personal services in connection with his education or training performed in that Contracting State.

#### Article 21 Teachers and Researchers

An individual who is, or immediately before visiting a Contracting State, was a resident of the other Contracting State and, at the invitation of a university, college, school or other educational institution or scientific research institution recognized as non-profitable by the Government of the first-mentioned Contracting State, is present in the first-mentioned Contracting State solely for the purpose of teaching, giving lectures or conducting research, shall be exempt from tax in the first-mentioned Contracting State, for a period of three years from the date of his first arrival in the first-mentioned Contracting State in respect of remuneration for such teaching, lectures or research.

#### Article 22 Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

#### Article 23 Methods for the Elimination of Double Taxation

1. In the case of a resident of Korea, double taxation shall be avoided as follows:

Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle hereof), the Chinese tax payable (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) under the laws of China and in accordance with this Agreement, whether directly or by deduction, in respect of income from sources within China shall be allowed as a credit against Korean tax payable in respect of that income. The credit shall not, however, exceed that proportion of Korean tax which the income from sources within China bears to the entire income subject to Korean tax.

2. In the case of a resident of China, double taxation shall be avoided as follows;

(a) Where a resident of China derives income from Korea, the amount of tax on that income payable under the laws of Korean tax and in accordance with the provisions of this Agreement, may be credited against the Chinese tax imposed on that resident. The amount of credit however, shall not exceed the amount of the Chinese tax on that income computed in accordance with the taxation laws and regulations of China.

(b) Where the income derived from Korea is dividend paid by a company which is a resident of Korea to a company which is a resident of Korea to a company which is a resident of China and which owns not less than 10 per cent of the shares of the company paying the dividend, the credit shall take into account the tax paid to Korea by the company paying the dividend in respect of its income.

3. The tax payable in a Contracting State mentioned in paragraphs 1 and 2 of this Article, shall be deemed to include the tax which would have been payable but for the legal provisions concerning tax reduction, exemption or other tax incentives of the Contracting State for the promotion of economic development. For the purpose of this paragraph, the amount of tax shall be deemed to be 10 per cent of the gross amount of the dividends, interest and royalties in the case of paragraph 2 of Article 10, paragraph 2 of Article 11 and paragraph 2 of Article 12, respectively.

4. The provisions of paragraph 3 of this Article shall apply only during a period of ten years starting from the first day of the calendar year following that in which this Agreement enters into force in accordance with the provisions of Article 28.

#### Article 24 Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other Contracting State than the taxation levied on enterprise of that other State carrying on the same activities. The provisions of this paragraph shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description subject to this Convention.

#### Article 25 Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is



a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of paragraphs 2 and 3. When it seems advisable for reaching agreement, representatives of the competent authorities of the Contracting States may meet together for an oral exchange of opinions.

#### Article 26 Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning the taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State ;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State ;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (order public).

#### Article 27 Diplomatic Agents and Consular Officers

Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

#### Article 28 Entry into Force

1. This Agreement shall enter into force on the thirtieth day after the date on which diplomatic notes indicating the completion of internal legal procedures necessary in each country for the entry into force of this Agreement have been exchanged.

2. This Agreement shall have effect:

(a) in respect of tax withheld at the source or after the first day of January in the year following that in which this Agreement enters into force ;and

(b) in respect of other taxes for the taxable year beginning on or after the first day of January in the year following that in which this Agreement enters into force

#### Article 29 Termination

This Agreement shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give written notice of termination to the other Contracting State through the diplomatic channels. In such event , this Agreement shall cease to have effect;

(a) in respect of tax withheld at the source on or after the first day of January of the calendar year next following that in which the notice is given; and

(b) in respect of other taxes for any taxable year beginning on or after the first day of January of the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed

this Agreement.

DONE in duplicate at Beijing this 28th day of March of the year one thousand nine hundred and ninety four in the Korean, Chinese and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

PROTOCOL

At the signing of the Agreement between the Government of the Republic of Korea and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, both sides have agreed upon the following provisions which form an integral part of the Agreement.

1. In respect of Article 8 "Shipping and Air Transport", it is understood that Korea shall exempt the value added tax on the operation of ships or aircraft in international traffic by an enterprise of China and China shall exempt the business tax on the operation of ships or aircraft in international traffic by an enterprise of Korea.

2. In respect of Article 15 "Dependent Personal Services", it is understood that employees who are sent by the shipping or air transportation enterprises of a Contracting State to the other Contracting State shall be taxable on their remuneration only in the first-mentioned Contracting State.

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

DONE in duplicate at Beijing this 28th day of March of the year one thousand nine hundred and ninety four in the Korean, Chinese and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF FOR THE GOVERNMENT OF  
THE REPUBLIC OF KOREA THE PEOPLE'S REPUBLIC OF  
/Sgd./ OF CHINA  
Han Sung-joo /Sgd./  
Liu Zhung Li

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SECOND PROTOCOL TO THE AGREEMENT

BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF  
CHINA

FOR THE AVOIDANCE OF DOUBLE TAXATION

AND THE PREVENTION OF FISCAL EVASION

WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of Korea and the Government of the People's Republic of China (hereinafter referred to as the "Contracting States"),

Having regard to the Agreement between the Government of the Republic of Korea and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Beijing on the 28th day of March 1994 (hereafter referred to as "the Agreement"),

Have agreed that the following provisions shall form an integral part of the Agreement:

Article 1

In respect of Article 1 of the Agreement, it is understood that the Agreement shall not apply to any company, trust or other entity that is a resident of a Contracting State and is beneficially owned or controlled, directly or indirectly, by one or more persons who are not residents of that State, if the amount of the tax imposed on the income of the company, trust or other entity by that State (after taking into account any reduction or offset of the amount of tax in any manner, including a refund, reimbursement, contribution, credit or allowance to the company, trust, or other entity or to any other person) is substantially lower than the amount that would be imposed by that State if all of the shares of the capital stock of the company or all of the interests in the trust or other entity, as the case may be, were beneficially owned by one or more individuals who were residents of that State. However, this

paragraph shall not apply if 90 per cent or more of the income on which the lower amount of tax is imposed is derived exclusively from the active conduct of a trade or business carried on by it, other than passive income from investment business.

## Article 2

In respect of the Korean taxes covered by Article 2 of the Agreement, it is understood that the Agreement shall also apply to the Korean special tax for rural development surcharged directly or indirectly on the tax base of the income tax or the corporation tax.

## Article 3

Paragraph 7 of Article 11 of the Agreement shall be deleted and replaced by the following:

"7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement."

## Article 4

Paragraph 1 of Article 23 of Korea's text and Paragraph 2 of Article 23 of China's text shall be deleted and replaced by the following:

"1. In the case of a resident of Korea, double taxation shall be avoided as follows:

Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle hereof):

(a) the Chinese tax payable (excluding, in the case of a dividend, tax payable in respect of profits out of which the dividend is paid) under the laws of China and in accordance with this Agreement, whether directly or by deduction, in respect of income from sources within China, shall be allowed as a credit against Korean tax payable in respect of that income. The credit shall not, however, exceed that proportion of Korean tax which the income from sources within China bears to the entire income subject to Korean tax;

(b) in the case of a dividend paid by a company which is a resident of China to a company which is a resident of Korea and which owns not less than 10 percent of the shares of the company paying the dividend, the credit shall

take into account (in addition to any Chinese tax for which credit may be allowed under the provisions of subparagraph (a) of this paragraph) the Chinese tax payable by the company paying the dividend in respect of the profits out of which such dividend is paid."

#### Article 5

1. Paragraph 3 of Article 23 of the Agreement shall be deleted, replaced by the following and shall have effect for another period of ten years starting from January 1st, 2005:

"3. The tax payable in a Contracting State mentioned in subparagraph (a) of paragraph 1 and paragraph 2 of this Article shall be deemed to include the tax which would have been payable but for the legal provisions concerning tax reduction, exemption or other tax incentives of the Contracting State for the promotion of economic development. For the purpose of this paragraph, the amount of tax shall be deemed to be 10 per cent of the gross amount of the dividends, interest and royalties in the case of paragraph 2 of Article 10, paragraph 2 of Article 11 and paragraph 2 of Article 12, respectively."

2. Paragraph 4 of Article 23 of the Agreement shall be deleted.

#### Article 6

Notwithstanding Paragraph 3 of Article 23, a resident of a Contracting State deriving income from the other Contracting State, being income referred to in that paragraph, shall not be deemed to have paid tax in respect of such income where the competent authority of a Contracting State considers, after consultation with the competent authority of the other Contracting State, that it is inappropriate to grant the benefits of Paragraph 3 of Article 23 to the said resident, having regard to:

(a) whether any arrangements have been entered into by any person for the purpose of taking advantage of paragraph 3 of Article 23 for the benefit of that person or any other person; or

(b) whether any benefit accrues or may accrue to any person who is neither a resident of one Contracting State nor a resident of the other Contracting State; or

(c) the prevention of fraud, evasion or avoidance of the taxes to which the Agreement applies.

#### Article 7

The Contracting States shall notify each other through diplomatic channels that the procedures required by its laws for the entry into force of this Second Protocol have been complied with. This Second Protocol shall enter into

force on the date of the later notification.

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

DONE in duplicate at Beijing, this 23th day of March, 2006, in the Korean, Chinese and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF                      FOR THE GOVERNMENT OF  
  
THE REPUBLIC OF KOREA                      THE PEOPLE'S REPUBLIC OF CHINA

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Memorandum of Understanding on the Agreement  
Between the Government of the Republic of Korea  
And the Government of the People's Republic of China  
For the Avoidance of Double Taxation and the Prevention of  
Fiscal Evasion with respect to Taxes on Income

The competent authorities of the Government of the Republic of Korea and the Government of the People's Republic of China held negotiation with respect to paragraph 3 of Article 11 and paragraphs 1 and 2 of Article 19 and agreed upon the following with a view to appropriate implementation of the Agreement between the Government of the Republic of Korea and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income:

1. For the purpose of paragraph 3 of Article 11, the term "the central bank and financial institution performing functions of a governmental nature" means:

a) in the case of Korea:

(i) Bank of Korea;

(ii) Korea Development Bank;

(iii) Export-Import Bank of Korea;

(iv) Korea Investment Corporation;

(v) Korea Export Insurance Corporation;

(vi) Financial Supervisory Service; and

(vii) Other financial institutions which are agreed upon by the competent authorities of the Contracting States through mutual agreements;

b) in the case of China:

(i) People's Bank of China;

(ii) China Development Bank;

(iii) Export-Import Bank of China;

(iv) Agricultural Development Bank of China;

(v) China Export & Credit Insurance Corporation;

(vi) National Council for Social Security Fund;

(vii) Organization comparable to "the Korea Investment Corporation" in terms of its ownership structure and functions performed (the name to be confirmed through exchange of letters by the competent authorities of the Contracting States);

(viii) Organizations performing banking, insurance and securities supervisory functions; and

(ix) Other financial institutions which are agreed upon by the competent authorities of the Contracting States through mutual agreements;

2. The provisions of paragraphs 1 and 2 of Article 19 shall likewise apply in respect of remuneration or pensions paid by:

a) in the case of Korea:



(i) Bank of Korea;

(ii) Korea Development Bank;

(iii) Export-Import Bank of Korea;

(iv) Korea Trade-Investment Promotion Agency;

(v) Korea Tourism Organization;

(vi) Korea Investment Corporation;

(vii) Korea Export Insurance Corporation;

(viii) Financial Supervisory Service; and

(ix) Other financial institutions which are agreed upon by the competent authorities of the Contracting States through mutual agreements.

b) in the case of China:

(i) People's Bank of China;

(ii) China Development Bank;

(iii) Export-Import Bank of China;

(iv) Agricultural Development Bank of China;

(v) China Council for the Promotion of International Trade;

(vi) China Export & Credit Insurance Corporation;

(vii) National Council for Social Security Fund;

(viii) Organization comparable to "the Korea Investment Corporation" in terms of its ownership structure and functions performed (the name to be confirmed through exchange of letters by the competent authorities of the Contracting States);

(ix) Organizations performing banking, insurance and securities supervisory functions; and

(x) Other financial institutions which are agreed upon by the competent authorities of the Contracting States through mutual agreements;

3. "The Memorandum of Understanding on the Tax Agreement between the Governments of the People's Republic of China and the Republic of Korea" signed as of 26, November, 1994 shall be replaced by this Memorandum of Understanding, starting from the date when this Memorandum of Understanding is officially signed.

DONE in duplicate at Beijing this 13th day of July , 2007, in the Korean, Chinese and English languages, each text being equally authentic. In case of any divergence, the English text shall prevail.

For the Competent Authority of  
The Republic of Korea

For the Competent Authority of  
The People's Republic of China