

Convention between the Republic of Korea and the State of Kuwait
for the Avoidance of Double Taxation and the Prevention
of Fiscal Evasion with Respect to Taxes on Income and Capital

Signed at Seoul December 5, 1998

Entered into force June 13, 2000

The Republic of Korea and the State of Kuwait,
DESIRING to promote their mutual economic relations by removing fiscal obstacles through the conclusion of Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital.

Have agreed as follows:

Article 1. **【PERSONAL SCOPE】** [2000.06.13]

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

Article 2. **【TAXES COVERED】** [2000.06.13]

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

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital or on elements of income or of capital 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 this Convention shall apply are in particular:

a) In the case of Korea:

- () the income tax;
- () the corporation tax;
- () the inhabitant tax; and
- () the special tax for rural development

(hereinafter referred to as "Korean tax");

b) In the case of Kuwait:

() the corporate income tax;

() the 5% of the net profits of shareholding companies payable to the Kuwait Foundation for Advancement of Science (KFAS) ; and

() the Zakat

(hereinafter referred to as "Kuwaiti tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Article 3. **【GENERAL DEFINITIONS】** [2000.06.13]

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

a) the term "Korea" means the territory of the Republic of Korea including any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights of the Republic of Korea with respect to the sea-bed and sub-soil and their natural resources may be exercised;

b) the term "Kuwait" means the State of Kuwait and includes any area beyond the territorial sea which in accordance with international law has been or may be designated under the laws of Kuwait as an area in which Kuwait may exercise sovereign rights or jurisdiction;

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

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

e) the term "national" means:

() any individual possessing the nationality of a Contracting State;

() any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State;

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 "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:

i) the term "tax" means Korean tax or Kuwaiti tax, as the context requires ;

j) the term "competent authority" means:

() in Korea: the Minister of Finance and Economy or his authorized representative;

() in Kuwait: the Minister of Finance or his 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 Contracting State concerning the taxes to which the Convention applies.

Article 4. 【RESIDENT】 [2000.06.13]

1. For the purposes of this Convention, the term "resident of a Contracting State" means:

a) in the case of Korea, any person who under the tax laws of Korea is a resident of Korea;

b) in the case of Kuwait, an individual who has his domicile in Kuwait and is a Kuwaiti national, and a company which is incorporated in Kuwait.

2. For the purposes of paragraph 1, a resident of a Contracting State shall include:

a) the Government of a Contracting State or any political subdivision or local authority thereof;

b) any government institution created in a Contracting State under public law such as a corporation, Central Bank, fund, authority, foundation, agency or other similar entity; and

c) in the case of Kuwait, any inter-governmental entity established in Kuwait in whose capital Kuwait subscribes together with other States.

3. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status 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;

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

c) if the Contracting 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 State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

d) 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 State of which he is a national;

e) if his status cannot be determined under the provisions of sub-paragraphs a) to d), the competent authorities of the Contracting States shall settle the question by mutual agreement.

4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated, or if that cannot be established, the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 5. **【PERMANENT ESTABLISHMENT】** [2000.06.13]

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

3. A building site or construction or installation project or a supervisory activity in connection therewith constitutes a permanent establishment only if such site, project or activity continues for a period of more than six months.

4. 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 constitutes a permanent establishment provided that such activities continue for the same project or a connected project for a period or periods aggregating more than six months within any twelve-month period.

5. Notwithstanding the preceding provisions of this Article, 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 sub-paragraphs 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.

6. Notwithstanding the provisions of paragraphs 1 and 2 above, where a person - other than an agent of an independent status to which paragraph 7 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, 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, if one of the following conditions is met:

a) he has and habitually exercises in the first-mentioned Contracting State a general authority to negotiate and conclude contracts for or on behalf of such enterprise;

b) he maintains in the first-mentioned Contracting State a stock of goods or merchandise from which he regularly sells goods or merchandise for or on behalf of such enterprise.

7. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the 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.

8. 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 Contracting 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】** [2000.06.13]

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 Contracting 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】** [2000.06.13]

1. The profits of an enterprise of a Contracting State shall be taxable only in that 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 Contracting State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or their similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office or any of its other offices.

4. 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.

5. In so far 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.

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】** [2000.06.13]

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.

2. 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.

3. In respect of operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State, that enterprise, if an enterprise of a resident of Kuwait shall be exempt from the value added tax in Korea and, if an enterprise of a resident of Korea, shall also be exempt from any tax similar to the value added tax in Korea which may hereafter be imposed in Kuwait.

Article 9. **【ASSOCIATED ENTERPRISES】** [2000.06.13]

1. Where

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

2. Where one of the Contracting States includes in the profits of an enterprise of that Contracting State- and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of the convention and the competent authorities of the States shall, if necessary, consult each other.

Article 10. **【DIVIDENDS】** [2000.06.13]

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 Contracting 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 10 per cent of the gross amount of the dividends. 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, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if 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 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, that 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 Contracting State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Contracting 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】** [2000.06.13]

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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. 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 governmental securities and income from bonds or debentures, including premium and prizes attaching to such securities, bonds or debentures.

4. The provisions of paragraphs 1 and 2 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 case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that Contracting 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.

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 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】** [2000.06.13]

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 15 per cent of the gross amount of such 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 work including cinematograph films, or films or tapes for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process.

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 that State itself, a political subdivision, 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 Convention.

Article 13. **【CAPITAL GAINS】** [2000.06.13]

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 the 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 with the whole enterprise) or of such fixed base, may be taxed in the other Contracting State.

3. Gains derived by an enterprise of a Contracting State 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 that Contracting State.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 shall be taxable only in the State of which the alienator is a resident.

Article 14. **【INDEPENDENT PERSONAL SERVICES】** [2000.06.13]

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 State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes especially but not exclusively independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15. **【DEPENDENT PERSONAL SERVICES】** [2000.06.13]

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 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 Contracting State if all the following conditions are met :

a) the resident is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned;

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

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 preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that Contracting State.

4. Ground staff appointed from head office of national air carrier of a Contracting State to the other Contracting State shall be exempted from taxes levied on their remunerations in the other Contracting State.

Article 16. **【DIRECTORS' FEES】** [2000.06.13]

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or other similar organ of a company which is a resident of the other Contracting State may be taxed in the first-mentioned Contracting State.

Article 17. **【ARTISTES AND SPORTSMEN】** [2000.06.13]

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 a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman 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 sportsman are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits, salaries, wages and similar income derived by entertainers or sportsmen who are residents of a Contracting State from activities in the other Contracting State if their visit to that Contracting State is substantially supported from the public funds of the other Contracting State, including those of any political subdivision, a local authority or statutory body thereof, nor to income derived by a non-profit making organization in respect of such activities provided no part of its income is payable to, or is otherwise available for the personal benefit of its proprietors, members or shareholders.

Article 18. **【PENSIONS AND ANNUITIES】** [2000.06.13]

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

2. As used in this Article:

a) the term "pensions and other similar remuneration" means periodic payments made after retirement in consideration of past employment or by way of compensations for injuries received in connection with past employment.

b) the term "annuities" means a stated sum payable periodically at stated times during life, or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 19. **【GOVERNMENT SERVICE】** [2000.06.13]

1. a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting State or subdivision or authority 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 Contracting State and the individual is a resident of that Contracting State and who has fulfilled one of the following conditions:

(i) is a national of that Contracting State;

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

2. a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting State or subdivision or authority shall be taxable only in that Contracting State.

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

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

Article 20. **【TEACHERS AND RESEARCHERS】** [2000.06.13]

An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who, at the invitation of the Government of the first-mentioned Contracting State or of a university, college, school, museum or other cultural institution in that first-mentioned Contracting State or under an official programme of cultural exchange, is present in that Contracting State for a period not exceeding two consecutive years solely for the purpose of teaching, giving lectures or carrying out research at such institution shall be exempt from tax in that Contracting State on his remuneration for such activity, provided that the payment of such remuneration is derived by him from outside that Contracting State.

Article 21. **【STUDENTS AND TRAINEES】** [2000.06.13]

1. Payments which a student or business 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 Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that Contracting State, provided that such payments arise from sources outside that Contracting State.

2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business trainee described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the Contracting State which he is visiting.

Article 22. **【OTHER INCOME】** [2000.06.13]

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 State.

Article 23. **【CAPITAL】** [2000.06.13]

If in the future a Contracting State introduces a general tax on capital, the competent authorities shall by mutual agreement decide how the Convention shall be applied to such a tax.

Article 24. **【ELIMINATION OF DOUBLE TAXATION】** [2000.06.13]

1. The laws in force in either of the Contracting States shall continue to govern the taxation in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. Double taxation shall be avoided as follows:

a) In the case of Korea:

() 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 Kuwaiti tax payable (excluding in the case of dividends, tax payable in respect of the profits out of which the dividends are paid) under the laws of Kuwait and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Kuwait 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 Kuwait bears to the entire income subject to Korean tax.

() For the purpose of item (i) of this sub-paragraph the Zakat mentioned in sub-paragraph b) of paragraph 3 of Article 2 shall be considered an income tax comprising both the income tax and the corporation tax.

b) In the case of Kuwait:

If a resident of Kuwait owns items of income and capital which are taxable in Korea, Kuwait may tax these items of income and capital and may give relief for Korean tax imposed in accordance with the provisions of its domestic law. In such a case, Kuwait shall deduct from the taxes so calculated the tax paid in Korea but in an amount not exceeding that proportion of the aforesaid

Kuwaiti tax which such items of income bear to the entire income.

3. Where in accordance with the laws of a Contracting State, taxes covered by this Convention are exempted or reduced in accordance with the special investment incentive measures for a limited period of time, such taxes which have been payable in accordance with this Convention but have been exempted or reduced shall be deemed to have been paid for the purposes of the preceding paragraphs of this Article.

Article 25. **【NON-DISCRIMINATION】** [2000.06.13]

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 favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision 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. 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.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, nothing in this Article shall affect the right of either Contracting State to grant an exemption or reduction of taxation in accordance with its domestic laws, regulations or administrative practices to its own nationals who are residents of that Contracting State. Such exemption or reduction, however, shall not apply in respect of such proportion of the capital of companies owned by persons who are nationals of the other Contracting State.

5. Except where the provisions of paragraph 1 of Article 9, paragraph 6 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.

6. Nothing in this Article shall be construed as imposing a legal obligation on a Contracting State to extend to the residents of the other Contracting State, the benefit of any treatment, preference or privilege which may be accorded to any third state or its residents by virtue of the formation of a customs union, economic union, special agreements, a free trade area or by virtue of any regional or subregional arrangement relating wholly or mainly to movement of capital and /or taxation to which the first-mentioned Contracting State may be a party.

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

Article 26. **【MUTUAL AGREEMENT PROCEDURE】** [2000.06.13]

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 Convention, he may, irrespective of the remedies provided by the domestic law of those Contracting 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 25, 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 this Convention.

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 this 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 this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

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 the preceding paragraphs.

Article 27. **【EXCHANGE OF INFORMATION】** [2000.06.13]

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. 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 Contracting 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 this Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public 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 practices 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 28. **【DIPLOMATIC AND CONSULAR PRIVILEGES】** [2000.06.13]

Nothing in this Convention shall affect the fiscal privileges of members of a diplomatic mission, a consular post or an international organization under the general rules of international law or under the provisions of special agreements.

Article 29. **【ENTRY INTO FORCE】** [2000.06.13]

1. This Convention shall be subject to ratification in accordance with the constitutional requirements of the two Contracting States and the instruments of ratification shall be exchanged at Kuwait as soon as possible.

2. This Convention shall enter into force on the thirtieth day after the date of exchange of the instruments of ratification referred to in paragraph 1 and its provisions shall have effect in both Contracting States:

a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the year of the signature of this Convention; and

b) in respect of other taxes, for the taxable year beginning on or after the first day of January

of the year of the signature of this Convention.

Article 30. 【TERMINATION】 [2000.06.13]

This Convention shall remain in force for a period of five years and shall continue in force thereafter for similar period or periods unless either Contracting State notifies the other in writing, six months before the expiry of the initial or any subsequent period, of its intention to terminate the Convention. In such event, the Convention shall cease to have effect in both Contracting States:

a) in respect of taxes withheld at source on amounts payable on or after the first day of January in the year following that in which the notice of termination is given; 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 the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

Done at Seoul this 5th day of December 1998, corresponding to the 16th day of Shabab 1419H, in duplicate, in the Korean, Arabic, and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF FOR THE GOVERNMENT OF
THE REPUBLIC OF KOREA THE STATE OF KUWAIT

[2000.06.13]

PROTOCOL (1)

The Republic of Korea and the State of Kuwait, on signing at Seoul on this 5th day of December 1998, corresponding to the 16th day Shaban of 1419H, the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital, have agreed upon the following provisions which shall form an integral part of the said Convention.

1. With respect to Article 7 (Business Profits):

a) It is understood that, in respect of paragraph 1, payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment, or

for information concerning industrial, commercial or scientific experience including consultancy and technical assistance, shall be deemed to be profits of an enterprise to which the provisions of Article 7 apply.

b) It is also understood that, in respect of paragraph 3, the term "expenses which are incurred for the purposes of the permanent establishment" means all expenses actually incurred whether in the Contracting State in which the permanent establishment is situated or elsewhere, reasonably allocable to and effectively connected with such permanent establishment.

2. With respect to Article 8 (Shipping and Air Transport):

It is understood that profits from the operation of vessels engaged in fishing, dredging or hauling activities shall be treated as income falling under paragraph 1.

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

Done at Seoul this 5th day of December 1998, corresponding to the 16th day of Shaban 1419H, in duplicate, in the Korean, Arabic and English languages, all texts being equally authentic. In case of divergency of interpretation, the English text shall prevail.

THE REPUBLIC OF KOREA
THE STATE OF KUWAIT

[2010.12.27]

PROTOCOL (2)

PROTOCOL TO THE CONVENTION BETWEEN
THE REPUBLIC OF KOREA AND THE STATE OF KUWAIT
FOR THE AVOIDANCE OF DOUBLE TAXATION AND
THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL
SIGNED IN SEOUL ON 5 DECEMBER 1998

The Republic of Korea and the State of Kuwait (hereinafter referred to as the "Contracting States"),

Recognizing that the purpose of the Convention between the Republic of Korea and the State of Kuwait for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at Seoul on 5 December, 1998 (hereinafter referred to as "the Convention") is to create as competitive an environment for the residents of one Contracting State carrying on business in the other Contracting State as is enjoyed by the residents of a third State

carrying on the same business in the same circumstances in that other Contracting State

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

Article 1

In respect of Article 2 of the Convention, a new item (iv) shall be added to subparagraph (b) of paragraph 3, which reads as follows:

"(iv) the tax subjected according to the Supporting of National Employee Law"

Article 2

In respect of Articles 5 and 7 of the Convention, it is understood that these Articles shall be based on the principle that only the profits arising from the activities of a building site or construction or installation project situated in a Contracting State may be attributed to that building site or construction or installation project. This principle means particularly that:

- (a) profits arising from the delivery of goods, machinery or equipment made, whether in connection with those activities or independently thereof, by the principal permanent establishment or another permanent establishment of the enterprise or a third party shall not be attributed to that building site or construction or installation project;
- (b) profits arising from planning, project work, design or research, as well as technical services which a resident of a Contracting State performs for the building site or construction or installation project located in the other Contracting State shall, insofar as these activities are performed outside that other Contracting State, not be attributed to that building site or construction or installation project.

Article 3

The term "10 per cent" shall be replaced by the term "5 per cent" in paragraph 2 of Article 10 of the Convention.

Article 4

1. The term "10 per cent" shall be replaced by the term "5 per cent" in paragraph 2 of Article 11 of the Convention.

2. New paragraphs 3 and 4 shall be added to Article 11 as follows:

"3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the other Contracting State shall be exempt from tax in the first-mentioned State.

4. For the purposes of paragraph 3, the term "Government" shall include:

- a) in the case of Korea:
 - (i) the Bank of Korea;
 - (ii) the Export-Import Bank of Korea;

- (iii) the Korea Development Bank;
- (iv) the Korea Export Insurance Corporation;
- (v) the Korea Investment Corporation;
- (vi) any other statutory body or institution wholly owned by the Government of Korea, as may be agreed from time to time between the competent authorities of the Contracting States.

b) in the case of Kuwait:

- (i) the Central Bank of Kuwait
- (ii) Kuwait Investment Authority
- (iii) Public Institution for Social Security
- (iv) Kuwait Petroleum Corporation
- (v) Kuwait Fund for Arab Economic Development
- (vi) any other statutory body or institution wholly owned by the Government of Kuwait, as may be agreed from time to time between the competent authorities of the Contracting States."

3. The phrase ",having regard to the debt-claim for which it is paid," in paragraph 6 of Article 11 of the Convention shall be deleted.

4. Paragraphs 3 to 6 in Article 11 of the Convention shall be renumbered to be paragraphs 5 to 8.

Article 5

In respect of Article 16 of the Convention, the Article shall be amended as follows:

"Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or other similar organ of a company which is a resident of the other Contracting State may be taxed in the first-mentioned State. However, such fees or payments may be taxed in the Contracting State of which the aforementioned company is a resident, but the tax so charged shall not exceed 17 per cent of the gross amount of such fees or other payments."

Article 6

A new Article 28A "Limitation of Benefits" shall be added to the Convention as follows:

"Article 28A Limitation on Benefits

A resident of a Contracting State shall not be entitled to benefits otherwise accorded to residents of a Contracting State by this Convention, if:

- (a) the resident is controlled directly or indirectly by one or more persons which are not residents of that Contracting State; and
- (b) one of the principal goals of the establishment, acquisition, existence or carrying on the activities of that resident has been to take advantage of the benefits provided by this Convention."

Article 7

1. Each Contracting State shall notify the other of the completion of its constitutional procedures for the entry into force of this Protocol. This Protocol shall enter into force on the date of receipt of the later of these notifications and its provisions shall thereupon have effect in both Contracting States:

- i) in respect of taxes withheld at source, for amounts payable on or after the first day of January of the year following that in which the Protocol enters into force:
- ii) in respect of other taxes, for taxable periods beginning on or after the first day of January of the year following that in which the Protocol enters into force.

2. This Protocol shall remain in force as long as the Convention remains in force.

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

Done in two originals at Kuwait, this second day of October, 2007, corresponding to the twentieth day of Ramadan 1428 AH, in the Korean, Arabic and English languages, all texts being equally authentic. In case of any divergence of interpretation or application, the English text shall prevail.

FOR THE GOVERNMENT OF
THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF
THE STATE OF KUWAIT