Agreement between the Government of Republic of Korea and the Government of the Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

Signed at Hanoi May 20, 1994
Entered into force September 9, 1994

The Government of the Republic of Korea and the Government of the Socialist Republic of Vietnam,
Desiring to conclude an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income,

Have agreed as follows:

Article 1.【Personal Scope】[1994.09.09]
This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2.【Taxes Covered】[1994.09.09]
1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, 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, taxes on the total amounts of wages or salaries paid by enterprises as well as taxes on capital appreciation.

3. The existing taxes to which the Agreement shall apply are in particular:
   a) In the case of Korea:
      (i) the income tax;
      (ii) the corporation tax; and
      (iii) the inhabitant tax, (hereinafter referred to as "Korean tax");
   b) In the case of Vietnam:
      (i) the personal income tax;
      (ii) the profit tax; and
      (iii) the profit remittance tax,
   (hereinafter referred to as "Vietnamese tax").

4. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement 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】[1994.09.09]

1. For the purposes of this Agreement, 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 "Vietnam" means the Socialist Republic of Vietnam; when used in a geographical sense, it means all its national territory, including its territorial sea and any area beyond its territorial sea, within which Vietnam, by Vietnamese legislation and in accordance with international law, has sovereign rights of exploration for and exploitation of natural resources of the sea-bed and its sub-soil and superjacent water mass;

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

d) the term "tax" means Korean tax or Vietnamese 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 "nationals" means:

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

(ii) all legal persons, partnerships and associations deriving 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 Korea, the Minister of Finance or his authorized representative; and

(ii) in the case of Vietnam, the Minister of Finance or his authorized representative.

2. As regards the application of the Agreement 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 Agreement applies.

Article 4.【Resident】[1994.09.09]

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

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

b) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

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

d) if he is a national of both 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, then it shall be deemed to be a resident of the State in which its place of effective management is situated. In case of doubts the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 5.【Permanent Establishment】[1994.09.09]

1. For the purposes of this Agreement, 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 constitutes a permanent establishment only if it lasts more than six months.

4. 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 or display 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 or display;

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.

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 - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that 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 shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that 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.

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】[1994.09.09]

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, boats 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】[1994.09.09]

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 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 business 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. 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. 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.

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

Article 8.【Shipping and Air Transport】[1994.09.09]

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 from the participation in a pool, a joint business or an international operating agency.

Article 9.【Associated Enterprises】[1994.09.09]

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.

Article 10.【Dividends】[1994.09.09]

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 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, 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 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 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 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 State.

Article 11.【Interest】[1994.09.09]

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. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State including political subdivisions and local authorities thereof, the central bank of that other Contracting State or any financial institution performing functions of a governmental nature or 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 political subdivisions and local authorities thereof, the central bank of that other Contracting State or any financial institution performing functions of a governmental nature shall be exempt from tax in the first-mentioned Contracting State.

4. For the purposes of paragraph 3, the terms "the central bank and any financial institution performing functions of a governmental nature" mean:

a) in the case of Korea:

(i) the Bank of Korea;

(ii) the Export-Import Bank of Korea, the Korea Development Bank and such other financial institution performing functions of a governmental nature as may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting States;

b) in the case of Vietnam:

(i) the State Bank of Vietnam;

(ii) the Bank for Foreign Trade of Vietnam (Vietcombank) and such other financial institution performing functions of a governmental nature as may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting States.

5. 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.

6. 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 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.

7. 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 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 State in which the permanent establishment or fixed base is situated.

8. 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 Agreement.

Article 12.【Royalties】[1994.09.09]

1. Royalties 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 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 beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the royalties in respect of payments of any kind received as a consideration for the use of, or the right to use, any patent, 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;

b) 15 per cent of the gross amount of the royalties in all other cases.

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 used for radio or television broadcasting, any patent, 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 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 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 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】[1994.09.09]

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 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 gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other 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 of which the enterprise is a resident.

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 State.

5. 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】[1994.09.09]

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 independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15.【】[1994.09.09]

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 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, and

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

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

Article 16.【Directors' Fees】[1994.09.09]

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 of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

Article 17.【Artistes and Sportsmen】[1994.09.09]

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

Article 18.【Pensions】[1994.09.09]

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 State.

Article 19.【Government Service】[1994.09.09]

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 State or subdivision or authority shall be taxable only in that State.

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

(i) is a national of that State; or

(ii) did not become a resident of that 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 State or subdivision or authority shall be taxable only in that 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 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.

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

a) in the case of Korea:

the Bank of Korea, the Export-Import Bank of Korea, the Korea Development Bank, the Korea Trade Promotion Corporation and other institutions performing functions of a governmental nature as may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting States.

b) in the case of Vietnam:

the State Bank of Vietnam, the Bank for Foreign Trade of Vietnam (Vietcombank), the Vietnamese Chamber of Commerce and Industry and other institutions performing functions of a governmental nature as may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting States.

Article 20.【Students】[1994.09.09]

1. Payments which a student or business apprentice 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 State, provided that such payments arise from sources outside that State.

2. Notwithstanding the provisions of Article 15, remuneration for services rendered by a student or a business apprentice in a Contracting State shall not be taxed in that State, provided that such services are in connection with his studies or training.

Article 21.【Professors and Teachers】[1994.09.09]

An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State, who, at the invitation of any university, school or other similar educational institution, which is recognized as non-profitable by the Government of that other State, visits that other Contracting State for a period not exceeding two years from the date of his first arrival in that other State, solely for the purposes of teaching or research or both as such educational institution shall be exempt from tax in that other State on his remuneration for such teaching or research.

Article 22.【Other Income】[1994.09.09]

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that 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 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 Elimination of Double Taxation】[1994.09.09]

1. In the case of a resident of Korea, double taxation shall be eliminated as follows:
Subject to the provisions of the 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 Vietnamese 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 Vietnam and in accordance with this Agreement, whether directly or by deduction, in respect of income from sources within Vietnam 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 Vietnam bears to the entire income subject to Korean tax.

2. In the case of a resident of Vietnam, double taxation shall be eliminated as follows:
Subject to the provisions of the law of Vietnam which relate to the allowance of a credit against Vietnamese tax of tax paid in a country outside Vietnam (which shall not affect the general principle of this Article), Korean tax payable under the law of Korea and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a resident of Vietnam from sources within Korea shall be allowed as a credit against Vietnamese tax payable in respect of that income. The credit shall not, however, exceed the Vietnamese tax as computed by reference to the same income before the credit is given.

3. For the purposes of credit referred to in paragraph 1, the term "Vietnamese tax payable" shall be deemed to include the amount of Vietnamese tax which, under the laws of Vietnam and in accordance with this Agreement, would have been payable had the Vietnamese tax not been exempted or reduced in accordance with:

a) the provisions of Articles 26, 27, 28, 32 or 33 of the Law on Foreign Investment in Vietnam 1987 as amended from time to time and connected regulations, as are effective on the date of signature of this Agreement as have been modified only in minor aspects after the date of signature of this Agreement; or

b) any other special incentive measures designed to promote economic development in Vietnam which may be introduced hereafter in modification of or in addition to, the existing laws, as may be agreed between the competent authorities of the Contracting States.

4. For the purpose of Korean tax credit referred to in paragraph 1, the Vietnamese tax payable shall, irrespective of the amount of tax actually paid, be deemed to be, in the case of:

a) dividends or interest, 10 per cent of the gross amount of the dividends or interest derived from sources within Vietnam; and

b) royalties, 15 per cent of the gross amount of the royalties derived from sources within Vietnam.

5. The provisions of paragraphs 3 and 4 of this Article shall apply only during a period of ten years starting from the first day of the calendar year next following that in which this Agreement enters into force in accordance with the provisions of Article 28. The period of application may be extended by mutual agreement between the competent authorities of the Contracting States.

Article 24.【Non-Discrimination】[1994.09.09]

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.

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. Except where the provisions of Article 9, paragraph 8 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 paragraphs 2 and 4 of this Article shall not apply to the Vietnamese profit remittance tax, which in any case shall not exceed 10 per cent of the gross amount of profits remitted, and the Vietnamese taxation in respect of oil exploration or production activities or in respect of agricultural production activities.

6. Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to resident individuals.

7. The provisions of this Article shall apply only to the taxes covered by this Agreement.

Article 25.【Mutual Agreement Procedure】[1994.09.09]

1. Where a person who is a resident of a Contracting State considers that the actions of the competent authority 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 Agreement.

3. The competent authorities of the Contracting States shall jointly endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. 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 the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 26.【Exchange of Information】[1994.09.09]

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 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 public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 of this Article 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.

Article 27.【Diplomatic Agents and Consular Officers】[1994.09.09]
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】[1994.09.09]
1. Each of the Contracting States shall notify to the other Contracting State the completion of the domestic procedures required by its law for entering into force of this Agreement. This Agreement shall enter into force 30 days after the later of these notifications.

2. This Agreement shall have effect:

a) in respect of taxes withheld at source, on amount paid or credited to non-residents on or after the first day of January of the calendar year next following that in which this Agreement enters into force; and

b) in respect of other taxes, for taxation years beginning on or after the first day of January of the calendar year next following that in which this Agreement enters into force.

Article 29.【Termination】[1994.09.09]
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 from the fifth year, following that in which this Agreement enters into force, give to the other Contracting State, through diplomatic channels, written notice of termination and, in such event, this Agreement shall cease to have effect:

a) in respect of taxes withheld at source on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following that in which the notice of termination is given; and

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

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.
Done in duplicate at Hanoi, this twentieth day of May of the year one thousand nine hundred and ninety-four in the Korean, Vietnamese and English languages, all texts being equally authentic. In case of divergency of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM

[1994.09.09]

PROTOCOL

At the moment of signing the Agreement between the Government of the Republic of Korea and the Government of the Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

1. In respect of the profit remittance tax in paragraph 3 b) (iii) of Article 2 "Taxes Covered", it is understood that the remitted profit which is liable to above mentioned tax in Vietnam will be taxed only in accordance with paragraph 2 of Article 10.

2. In respect of paragraph 4 a) (ii) of Article 11 "interest" and paragraph 4 a) of Article 19 "Government Service", it is understood that the Export-Import Bank of Korea is a government-invested bank which is established by the "Export-Import Bank of Korea Act" to promote, in close conformity with government policies, the sound development of the national economy and economic cooperation with foreign countries by extending the financial aid required for export and import transactions, overseas investment and the development of natural resources abroad, and is operated under the control and supervision of the Korean Government. It is also understood that the Korea Development Bank is a government-owned bank which is established by the "Korea Development Bank Act" to furnish and administer funds, in close conformity with government policies, for the financing of major industrial projects in order to expedite industrial development and expansion of the national economy, and is operated under the control and supervision of the Korean Government. Furthermore, the above two banks do not receive deposits from the public. It is therefore understood that, all these being taken into account, these two banks perform functions of a governmental nature and distinctively differ from commercial banks in these respects.

3. In respect of Article 24 "Non-discrimination", it is understood that, if a Contracting State hereinafter concludes or has already concluded with any other country a tax treaty of which the non-discrimination provisions are less discriminatory to a resident of the other Contracting State than the current provisions of non-discrimination of this Agreement, the first-mentioned provisions shall be applied promptly in place of the last-mentioned provisions.

IN WITNESS WHEREOF, the undersigned have signed this Protocol which shall have the same force and validity as if it were inserted word by word in the Agreement.

Done in duplicate at Hanoi this twentieth day of May of the year one thousand nine hundred and

ninety-four in the Korean, Vietnamese and English languages, all texts being equally authentic. In case of divergency of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF FOR THE GOVERNMENT OF
THE REPUBLIC OF KOREA THE SOCIALIST REPUBLIC OF
/Sgd./ VIETNAM
Han Sung-joo /Sgd./
Ho Te

[2005.01.28]

Minutes of The Negotiations Between the Governments Of Republic of Korea and the Socialist Republic of Vietnam for the Avoidance Of Double Taxation And The Prevention Of Fiscal Evasion with respect to taxes on income

1. A delegation from the Republic of Korea led by Mr. Chang-Yong Moon, Director of the International Tax Division, Tax and Customs Office, Ministry of Finance and Economy as the Competent Authority of the Republic of Korea in the Agreement between the two governments for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (hereinafter referred to as DTA) and a delegation from the Socialist Republic of Vietnam led by Mrs. Nguyen Thi Cuc, Deputy Director General, General Department of Taxation, Ministry of Finance as the Competent Authority of the Socialist Republic of Vietnam in the DTA met in Hanoi on 28 January, 2005to negotiate the extension of the tax sparing credit provision under Article 23 and clarify the governmental nature and functions of the Export-Import Bank of Korea under Article 11 of the DTA and the Protocol attached therewith. The names of the members of the two delegations are set out in Annexure "A" herewith.

2. The head of the Vietnamese delegation welcomed the Korean delegation. The head of Korean delegation thanked the head and members of the Vietnamese delegation for the warm welcome. The two heads of delegation agreed upon the importance and mutual benefits of the extension of the tax sparing credit provision under Article 23 and the clarification of the governmental nature and functions of the Export-Import Bank of Korea under Article 11 of the DTA and the Protocol attached therewith to encourage Korean investment in Vietnam and promote economic development of both countries.

3. The two delegations held a number of meetings to discuss the two above-mentioned issues. The negotiation was held in an atmosphere of cordiality, mutual understanding and appreciation of each other's viewpoints. At the conclusion of the negotiation, both sides agreed to extend the tax sparing credit provision under Article 23 for another 10 years commencing the 1st January 2005. The Korean delegation had provided the Vietnamese delegation with a thorough explanation about the capital contributed and role of the Export-Import Bank of Korea in the economy of Korea which expresses the governmental nature of the Export-Import Bank of Korea as stated in

paragraph 3 and 4 of
Article 11 of the DTA and paragraph 2 of the Protocol attached therewith. Both sides also agreed that interest arising in Vietnam and derived by the Export-Import Bank of Korea under paragraph 3 and 4 of Article 11 of the DTA and paragraph 2 of the Protocol attached therewith has been and shall be exempt from income tax in Vietnam.

4. The two delegations agreed that this minute shall serve as the mutual agreement between the Competent Authorities stated under paragraph 5 of Article 23 of the DTA.

5. This minute shall form an integral part of the DTA and enter into force from the 1st day of January of the year two thousand and five.

DONE in duplicate in Hanoi this 28thday of January of the year two thousand and five in the English language.

Competent Authority of Vietnam	Competent Authority of Korea
Mrs. NGUYEN Thi Cuc	Mr. MOON, Chang Yong
