

Convention between
the Government of the Republic of Korea
and
the Cabinet of Ministers of Ukraine
for the Avoidance of Double Taxation and the Prevention of Fiscal
Evasion with Respect to Taxes on Income and Capital

Signed at Kiev September 29, 1999

Entered into force March 19, 2002

The Government of the Republic of Korea and the Cabinet of Ministers of Ukraine,
Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal
evasion with respect to taxes on income and capital and confirming their endeavour to the
development and deepening of mutual economic relations,

Have agreed as follows:

Article 1. **【PERSONAL SCOPE】** [2002.03.19]

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

Article 2. **【TAXES COVERED】** [2002.03.19]

1. This Convention shall apply to taxes on income and capital 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 and capital all taxes imposed on total income and
on value of capital or on elements of income or of capital including taxes on gains from the
alienation of movable or immovable property and taxes on the total amounts of wages or salaries
paid by enterprises.

3. The existing taxes to which the 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 Ukraine:

() the tax on profits of enterprises; and
() the personal income tax;
(hereinafter referred to as "Ukrainian tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed by either Contracting State 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]** [2002.03.19]

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 "Ukraine" when used in a geographical sense, means the territory of Ukraine, its Continental Shelf and its exclusive (maritime) economic zone, including any area outside the territorial sea of Ukraine which in accordance with international law has been or may hereafter be designated, as an area within which the rights of Ukraine with respect to the sea bed and sub-soil and their natural resources may be exercised;

c. the terms a Contracting State and the other Contracting State mean Korea or Ukraine, as the context requires;

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

e. the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

f. 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;

g. 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;

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 "competent authority" means:

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

() in the case of Ukraine, State Tax Administration of Ukraine or its authorized representative.

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

Article 4. **【RESIDENT】** [2002.03.19]

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head or main office, place of registration, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

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 Contracting State in which he has a permanent home available to him; 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);

b. 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

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

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

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 5. 【PERMANENT ESTABLISHMENT】 [2002.03.19]

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

2. The term "permanent establishment" includes especially:

- a. a place of management;
- b. a branch;
- c. an office;
- d. a factory;
- e. a workshop;

f. a mine, an oil or gas well, a quarry or any other place of extraction or exploration of natural resources; and g. a store or any premises used as a sales outlet.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than 12 months. However, competent authorities of the Contracting States in which such works are exercised may, on the basis of an application submitted by the relevant persons, positively consider the extension of the minimum duration required to constitute a permanent establishment up to 18 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, 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.

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 on behalf of the enterprise, or maintains a stock of goods or merchandise belonging to the enterprise, from which regular sale of such goods and merchandise is carried on 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】** [2002.03.19]

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of,

or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7. **【BUSINESS PROFITS】** [2002.03.19]

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. Insofar as it has been customary in a Contracting State to determine, according to its laws, 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 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent

establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

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

Article 8. **【SHIPPING AND AIR TRANSPORT】** [2002.03.19]

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

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:

(a) income from the rental on a bareboat basis of ships or aircraft; and

(b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise, where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

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

Article 9. **【ASSOCIATED ENTERPRISES】** [2002.03.19]

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 a Contracting State includes in the profits of an enterprise of that State - and taxes

accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other 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 this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10. **【DIVIDENDS】** [2002.03.19]

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:

a. 5 per cent of the gross amount of the dividends if the owner is a company (other than a partnership) which holds directly at least 20 per cent of the capital of the company paying the dividends;

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

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

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

4. The provisions of paragraphs 1 and 2 shall not apply 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 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】 [2002.03.19]

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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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 government securities and income from bonds or debentures, including premiums 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 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 of this Convention, 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 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.

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 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.

7. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State, a local authority thereof, the Central Bank of that other Contracting State or any other financial institution established and owned by the Government of the other Contracting State to promote trade and investment, or by any resident of the other Contracting State with respect to debt-claims guaranteed, insured by the Government of that other Contracting State, a local authority thereof, the Central Bank of the other Contracting State or any other financial institution established and owned by the Government of the other Contracting State to promote trade and investment shall be exempt from tax in the first-mentioned Contracting State.

8. For the purpose of paragraph 7, the terms "the Central Bank" and "financial institution established and owned by the Government of the other Contracting State to promote trade and investment " mean respectively:

(a) in the case of Korea:

- the Bank of Korea;
- the Korea Export-Import Bank; and
- the Korea Development Bank;

(b) in the case of Ukraine:

- the National Bank of Ukraine;
- the State Export-Import Bank of Ukraine.

9. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

Article 12. **【ROYALTIES】** [2002.03.19]

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State if such resident is the beneficial owner of the royalties.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a

consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, or films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience (know-how).

4. The provisions of paragraph 1 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. 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.

6. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

7. 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.

Article 13. **【CAPITAL GAINS】** [2002.03.19]

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 derived by a resident of a Contracting State from the alienation of shares, other than shares quoted on an Approved Stock Exchange, issued by a company or from alienation of interest

in an enterprise being a resident of the other Contracting State may be taxed in that other Contracting State if the property of the company or the enterprise of the other Contracting State consists principally of immovable property situated in the other Contracting State.

3. 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 that other State.

4. 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.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident provided that those gains are subject to tax in that Contracting State.

Article 14. **【INDEPENDENT PERSONAL SERVICES】** [2002.03.19]

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State unless he has a fixed base regularly available to him in the other State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other 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. **【DEPENDENT PERSONAL SERVICES】** [2002.03.19]

1. Subject to the provisions of Articles 16, 18, and 19, 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 commencing or ending in the fiscal year concerned; 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 may be taxed in the Contracting State of which the enterprise operating the ship or aircraft is a resident.

Article 16. **【DIRECTORS' FEES】** [2002.03.19]

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 State.

Article 17. **【ARTISTES AND SPORTSMEN】** [2002.03.19]

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】** [2002.03.19]

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】** [2002.03.19]

1.
a) Salaries, wages and similar remunerations 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 a subdivision or authority shall be taxable only in that State.

b) However, such salaries, wages and similar 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:

() is a national of that other State; or

() did not become a resident of that other 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 a subdivision or local 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 salaries, wages and similar 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. **【STUDENTS】** [2002.03.19]

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 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.

Article 21. **【OTHER INCOME】** [2002.03.19]

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that 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 22. **【CAPITAL】** [2002.03.19]

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by 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 by 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, may be taxed in that other State.

3. Capital represented by ships and aircraft, road vehicles operated by an enterprise of a Contracting State in international traffic or by boats engaged in inland waterways transport, and by movable property pertaining to the operation of such ships, aircraft and boats, road vehicles shall be taxable only in that Contracting State.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23. **【ELIMINATION OF DOUBLE TAXATION】** [2002.03.19]

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

Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle hereof), the tax payable(excluding, in the case of dividends, tax payable in respect of profits out of which the dividends are paid) under the laws of Ukraine and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Ukraine 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 Ukraine bears to the entire income subject to Korean tax.

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

Subject to the provisions of the law of Ukraine regarding the elimination of tax paid in a territory outside Ukraine (which shall not affect the general principle hereof), Korean tax paid under the

laws of Korea, and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable capital from sources within Korea shall be allowed as a credit against any Ukrainian tax computed by reference to the same profits, income or capital by reference to which the Korean tax is computed.

3. Such deductions in either case shall not exceed that part of income tax or capital tax as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in that other State.

4. Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

5. For the purposes of paragraphs 1 and 2 of this Article, profits, income and capital gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other Contracting State.

Article 24. **【NON-DISCRIMINATION】** [2002.03.19]

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 provisions shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. Stateless persons who are residents of a Contracting State shall not be subjected in either 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 the State concerned in the same circumstances are or may be subjected.

3. 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 Contracting State than the taxation levied on enterprises of that other State carrying on the same activities.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 5 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. Similarly, any debts of an enterprise

of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5. Enterprise 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.

6. 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. Likewise the residents of the other Contracting State are not obliged to be granted any exemption which is granted by local government of the first-mentioned Contracting State not in accordance with general laws.

7. The provisions of this Article shall apply to taxes covered by this Convention.

Article 25. **【MUTUAL AGREEMENT PROCEDURE】** [2002.03.19]

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 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 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 the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

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 26. **【EXCHANGE OF INFORMATION】** [2002.03.19]

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, in particular , to prevent fraud and to facilitate the administration of statutory provisions against legal avoidance. 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 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. The competent authorities shall develop the appropriate conditions, methods and technics regarding cases, in respect of which such exchange of information may be done, including where it is necessary exchange of information regarding tax evasions, by way of consultations.

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

a) to carry out administrative measures at variance with the laws and administrative practice in either Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of either 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. **【MEMBERS OF DIPLOMATIC OR PERMANENT MISSIONS AND CONSULAR POSTS】**
[2002.03.19]

Nothing in this Convention shall affect the fiscal privileges accorded to members of diplomatic or permanent missions and consular posts under the general rules of international law or under the provisions of special agreements.

Article 28. **【ENTRY INTO FORCE】** [2002.03.19]

1. Each of the Contracting States shall notify to the other, through the diplomatic channel the completion of the procedures required by its domestic law for the bringing into force of this Convention. This Convention shall enter into force on the date of the later of these notifications.

2. This Convention shall have effect:

a) in Korea:

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

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

b) in Ukraine:

() in respect of taxes on dividends, interest or royalties for any payments made on or after the sixtieth day following that day on which the Convention enters into force;

() in respect of tax on income of enterprises for any taxation period beginning on or after 1 January in the calendar year next following that in which the Convention enters into force;

() in respect of income tax on citizens for any payments made on or after the sixtieth day following that day on which the Convention enters into force.

Article 29. **【TERMINATION】** [2002.03.19]

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention through diplomatic channel, by giving notice of termination at least six months before the end of any calendar year beginning after the expiry of five years from the date of entry into force of the Convention.

In such event, the Convention shall cease to have effect

a) in Korea:

i) in respect of taxes withheld at source, on or after the first day of January in the year following that in which the notice is given; and

ii) 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 is given;

b) in Ukraine:

i) in respect of taxes on dividends, interest or royalties for any payments made on or after the sixtieth day following that day on which the notice is given;

ii) in respect of tax on income of enterprises for any taxation period beginning on or after 1 January in the calendar year next following that in which the notice is given;

iii) in respect of income tax on citizens for any payments made on or after the sixtieth day following that day on which the notice is given.

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

Done in duplicate at Kiev this twenty ninth day of September 1999 in the Korean, Ukrainian and English languages, all texts being equally authentic. In the case of divergence of interpretations, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

FOR THE CABINET OF THE MINISTERS OF UKRAINE

[2002.03.19]

PROTOCOL

At the moment of the signature of the Convention between the Government of the Republic of Korea and the Cabinet of Ministers of Ukraine for the Avoidance of Double Taxation And The Prevention of Fiscal Evasion with respect to Taxes on Income and Capital, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

1. With reference to paragraph 8(b) Article 11, the Ukrainian bank which may be created by the Government of Ukraine to pursue the development and reconstructing of Ukraine will be added to the Ukrainian list by exchanging letters between the competent authorities of the Contracting States.

2. With respect to paragraph 2 Article 13, it is understood that the property of the company consists principally of immovable property means a property which consists of not less than fifty percent of immovable property.

3. With respect to Article 19, it is understood that provisions of the Article shall apply also to the Korea Trade - Investment Promotion Agency as long as this Agency meets the following criteria:

- this agency is owned by the Government of the Republic of Korea;
- it is fully maintained (funded) by the Government of the Republic of Korea;
- it is a non-profit organization and renders its service free of charge.

Likewise, provisions of Article 19 shall also apply to similar Ukrainian agency which otherwise would not be subject to the provisions of this Article and meets the following criteria:

- this agency is owned by the Government of Ukraine;
- it is fully maintained (funded) by the Cabinet of Ministers of Ukraine;
- it is a non-profit organization and renders its service free of charge.

IN WITNESS WHEREOF the undersigned, have signed the present protocol which shall have the

same force and validity as if it were inserted word by word in the Convention.

Done in duplicate at Kiev this twenty ninth day of September 1999 in the Korean, Ukrainian and English languages, all texts being equally authentic. In the case of divergence of interpretations, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

FOR THE CABINET OF MINISTERS OF UKRAINE
