

**SECOND PROTOCOL TO THE AGREEMENT
BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF
CHINA AND THE GOVERNMENT OF THE REPUBLIC OF KOREA
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME**

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

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

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

Article 1

In respect of Article 1 of the Agreement, it is understood that the Agreement shall not apply to any company, trust or other entity that is a resident of a Contracting State and is beneficially owned or controlled, directly or indirectly, by one or more persons who are not residents of that State, if the amount of the tax imposed on the income of the company, trust or other entity by that State (after taking into account any reduction or offset of the amount of tax in any manner, including a refund, reimbursement, contribution, credit or allowance to the company, trust, or other entity or to any other person) is substantially lower than the amount that would be imposed by that State if all of the shares of the capital stock of the company or all of the interests in the trust or other entity, as the case may be, were beneficially owned by one or more individuals who were residents of that State. However, this paragraph shall not apply if 90 per cent or more of the income on which the lower amount of tax is imposed is derived exclusively from the active conduct of a trade or business carried on by it, other than passive income from investment business.

Article 2

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

Article 3

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

"7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the

last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.”

Article 4

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

“1. In the case of a resident of Korea, double taxation shall be avoided as follows:
Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle hereof):

- (a) the Chinese tax payable (excluding, in the case of a dividend, tax payable in respect of profits out of which the dividend is paid) under the laws of China and in accordance with this Agreement, whether directly or by deduction, in respect of income from sources within China, shall be allowed as a credit against Korean tax payable in respect of that income. The credit shall not, however, exceed that proportion of Korean tax which the income from sources within China bears to the entire income subject to Korean tax;
- (b) in the case of a dividend paid by a company which is a resident of China to a company which is a resident of Korea and which owns not less than 10 percent of the shares of the company paying the dividend, the credit shall take into account (in addition to any Chinese tax for which credit may be allowed under the provisions of subparagraph (a) of this paragraph) the Chinese tax payable by the company paying the dividend in respect of the profits out of which such dividend is paid.”

Article 5

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

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

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

Article 6

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

- (a) whether any arrangements have been entered into by any person for the purpose of taking advantage of paragraph 3 of Article 23 for the benefit of that person or any other person; or
- (b) whether any benefit accrues or may accrue to any person who is neither a resident of one Contracting State nor a resident of the other Contracting State; or
- (c) the prevention of fraud, evasion or avoidance of the taxes to which the Agreement applies.

Article 7

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

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

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

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

**FOR THE GOVERNMENT OF
THE REPUBLIC OF KOREA**