



The Korean Peninsula Energy Development Organization
600 3rd Avenue, 12th Floor
New York, NY 10004

AGREEMENT ON THE ESTABLISHMENT OF THE KOREAN PENINSULA ENERGY DEVELOPMENT ORGANIZATION

INTRODUCTORY NOTE

The Agreement on the Establishment of the Korean Peninsula Energy Development Organization (the Agreement) was signed on 9 March 1995, in New York.

A protocol signed by the Governments of the Republic of Korea, Japan and the United States on 19 September 1997 in Washington amended Article V(b), Article VI(b) and (e), Article VIII(d) and (f) and Article XIV(b), (c) and (d) of the Agreement.

The amendments to Article V(b), Article V(b) and Article XIV(b) make international organizations, including regional integration organizations, as well as states, eligible for membership in the Organization and representation on the Executive Board on the basis of substantial and sustained support for the Organization.

[Text]

The Government of the United States of America, the Government of Japan, and the Government of the Republic of Korea:

Affirming the objective of an overall resolution of the North Korean nuclear issue, as referred to in the Agreed Framework Between the United States of America and the Democratic People's Republic of Korea, signed in Geneva on October 21, 1994 (hereinafter referred to as "the Agreed Framework");

Recognizing the critical importance of the nonproliferation and other steps that must be taken by North Korea, as described in the Agreed Framework, as a condition of implementation of the Agreed Framework;

Bearing in mind the paramount importance of maintaining peace and security on the Korean Peninsula;

Wishing to cooperate in taking the steps necessary to implement the Agreed Framework, consistent with the Charter of the United Nations, the Treaty on the Non-Proliferation of Nuclear Weapons, and the Statute of the International Atomic Energy Agency; and

Convinced of the need to establish an organization, as contemplated in the Agreed Framework, to coordinate cooperation among interested parties and to facilitate the financing and execution of projects needed to implement the Agreed Framework;

Have agreed as follows:

ARTICLE I

The Korean Peninsula Energy Development Organization (hereinafter referred to as "KEDO" or "the Organization") is established upon the terms and conditions hereinafter set forth.

ARTICLE II

(a) The purposes of the Organization shall be to:

- (1) provide for the financing and supply of a light-water reactor (hereinafter referred to as "LWR") project in North Korea (hereinafter referred to as "the DPRK"), consisting of two reactors of the Korean standard nuclear plant model with a capacity of approximately 1,000 MW(e) each, pursuant to a supply agreement to be concluded between the Organization and the DPRK;
- (2) provide for the supply of interim energy alternatives in lieu of the energy from the DPRK's graphite-moderated reactors pending construction of the first light-water reactor unit; and
- (3) provide for the implementation of any other measures deemed necessary to accomplish the foregoing or otherwise to carry out the objectives of the Agreed Framework.

(b) The Organization shall fulfill its purposes with a view toward ensuring the full implementation by the DPRK of its undertakings as described in the Agreed Framework.

ARTICLE III

In carrying out these purposes, the Organization may do any of the following:

- (a) Evaluate and administer projects designed to further the purposes of the Organization;
- (b) Receive funds from members of the Organization or other states or entities for financing projects designed to further the purposes of the Organization, manage and disburse such funds, and retain for Organization purposes any interest that accumulates on such funds;
- (c) Receive in-kind contributions from members of the Organization or other states or entities for projects designed to further the purposes of the Organization;
- (d) Receive funds or other compensation from the DPRK in payment for the LWR project and other goods and services provided by the Organization;
- (e) Cooperate and enter into agreements, contracts, or other arrangements with appropriate financial institutions, as may be agreed upon, for the handling of funds received by the Organization or designated for projects of the Organization;
- (f) Acquire any property, facilities, equipment, or goods necessary for achieving the purposes of the Organization;
- (g) Conclude or enter into agreements, contracts, or other arrangements, including loan agreements, with states, international organizations, or other appropriate entities, as may be necessary for achieving the purposes and exercising the functions of the Organization;
- (h) Coordinate with and assist states, local authorities and other public entities, national and international institutions, and private parties in carrying out activities that further the purposes of the Organization, including activities promoting nuclear safety;
- (i) Dispose of any receipts, funds, accounts, or other assets of the Organization and distribute the proceeds in accordance with the financial obligations of the Organization, with any remaining assets or proceeds therefrom to be distributed in an equitable manner according to the contributions of each member of the Organization, as may be determined by the Organization; and

- (j) Exercise such other powers as shall be necessary in furtherance of its purposes and functions, consistent with this Agreement.

ARTICLE IV

- (a) Activities undertaken by the Organization shall be carried out consistent with the Charter of the United Nations, the Treaty on the Non-Proliferation of Nuclear Weapons, and the Statute of the International Atomic Energy Agency.
- (b) Activities undertaken by the Organization shall be subject to the DPRK's compliance with the terms of all agreements between the DPRK and KEDO and to the DPRK acting in a manner consistent with the Agreed Framework. In the event that these conditions are not satisfied, the Organization may take appropriate steps.
- (c) The Organization shall obtain formal assurances from the DPRK that nuclear materials, equipment, or technology transferred to the DPRK in connection with projects undertaken by the Organization shall be used exclusively for such projects, only for peaceful purposes, and in a manner that ensures the safe use of nuclear energy.

ARTICLE V

- (a) The original members of the Organization shall be the United States of America, Japan, and the Republic of Korea (hereinafter referred to as the "original Members").
- (b) Additional states and international organizations, including regional integration organizations, that support the purposes of the Organization and offer assistance, such as providing funds, goods, or services to the Organization, may, with the approval of the Executive Board, also become members of the Organization (hereinafter jointly with the original Members referred to as "Members") in accordance with the procedures in Article XIV(b).

ARTICLE VI

- (a) The authority to carry out the functions of the Organization shall be vested in the Executive Board.

- (b) The Executive Board shall consist of one representative of each of the original Members and representatives of subh other Members as may be approved. Such approval shall be made by decision of the Executive Board existing at the time of such approval on the basis of substantial and sustained support to the Organization. The terms and conditions in connection with this approval shall be determined in each case by the Executive Board existing at the time of such approval.
- (c) The Executive Board shall select a Chair from among the representatives serving on the Executive Board for a term of two years.
- (d) The Executive Board shall meet whenever necessary at the request of the Chair of the Executive Board, the Executive Director, or any representative serving on the Executive Board, in accordance with rules of procedure it shall adopt.
- (e) Decisions of the Executive Board shall be made by a consensus of the representatives serving on the Executive Board or, if a consensus is not achievable, by a majority vote. If voting is required, each Member that is represented on the Executive Board (hereinafter referred to as "Executive Board Member") shall be entitled to one vote to be cast by its representative serving on the Executive Board.
- (f) The Executive Board may approve such rules and regulations as may be necessary or appropriate to achieve the purposes of the Organization.
- (g) The Executive Board may take any necessary action on any matter relating to the functions of the Organization.

ARTICLE VII

- (a) The General Conference shall consist of representatives of all the Members.
- (b) The General Conference shall be held annually to consider the annual report, as referred to in Article XII.
- (c) Extraordinary meetings of the General Conference shall be held at the direction of the Executive Board to discuss matters submitted by the Executive Board.
- (d) The General Conference may submit a report containing recommendations to the Executive Board for its consideration.

ARTICLE VIII

- (a) The staff of the Organization shall be headed by an Executive Director. The Executive Director shall be appointed by the Executive Board as soon as possible after this Agreement enters into force.
- (b) The Executive Director shall be the chief administrative officer of the Organization and shall be under the authority and subject to the control of the Executive Board. The Executive Director shall exercise all the powers delegated to him or her by the Executive Board and shall be responsible for conducting the ordinary business of the Organization, including the organization and direction of a headquarters and a staff, the preparation of annual budgets, the procurement of financing, and the approval, execution and administration of contracts to achieve the purposes of the Organization. The Executive Director may delegate such powers to other officers or staff members as he or she deems appropriate. The Executive Director shall perform his or her duties in accordance with all rules and regulations approved by the Executive Board.
- (c) The Executive Director shall be assisted by two Deputy Executive Directors. The two Deputy Executive Directors shall be appointed by the Executive Board.
- (d) The Executive Director and the Deputy Executive Directors shall be appointed for terms of two years and may be reappointed. The terms of employment, including salaries, of these officers shall be determined by the Executive Board. The Executive Director and the Deputy Executive Directors may be removed prior to the expiration of their terms by a decision of the Executive Board.
- (e) The Executive Director shall have the authority to approve projects, execute contracts, and enter into other financial obligations on behalf of the Organization within the guidelines adopted by the Executive Board and the limits of the approved budget, provided that the Executive Director shall obtain the prior approval of the Executive Board for projects, contracts, or financial obligations that exceed a specified value, which shall be determined by the Executive Board based on the need for effective and efficient operation of the Organization.
- (f) The Executive Director shall establish staff positions and terms of employment, including salaries, subject to the approval of the Executive Board. The Executive Director shall appoint qualified personnel to such staff positions and dismiss personnel as necessary, in accordance with rules and

regulations to be approved by the Executive Board. The Executive Director shall seek to appoint a staff in which the nationals of the original Members and other Executive Board Members are fairly represented, paying due regard to the importance of securing the highest standards of integrity, efficiency, and technical competence.

- (g) The Executive Director shall report to the Executive Board and the General Conference on the activities and finances of the Organization. The Executive Director shall promptly bring to the notice of the Executive Board any matter that may require Executive Board action.
- (h) The Executive Director, with the advice of the Deputy Executive Directors, shall prepare rules and regulations consistent with this Agreement and the purposes of the Organization. The rules and regulations shall be submitted to the Executive Board for its approval prior to implementation.
- (i) In the performance of their duties, the Executive Director and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action that might reflect on their position as international officials responsible only to the Organization. Each Member undertakes to respect the exclusively international character of the responsibilities of the Executive Director and the staff and not to seek to influence them in the discharge of their responsibilities.

ARTICLE IX

- (a) The Executive Board shall establish Advisory Committees to provide advice to the Executive Director and the Executive Board, as appropriate, on specific projects being carried out by the Organization or proposed to be carried out by the Organization. Advisory Committees shall be established for the light-water reactor project, the project for the provision of interim energy alternatives, and such other projects as the Executive Board may determine.
- (b) Each Advisory Committee shall include representatives of the original Members and other Members that support the project for which the Advisory Committee was established.
- (c) The Advisory Committees shall meet at such times as they may determine.
- (d) The Executive Director shall keep the Advisory Committees fully informed of matters pertinent to their respective projects, and the Executive Board and

Executive Director shall give due consideration to the recommendations of the Advisory Committees.

ARTICLE X

- (a) The budget for each fiscal year shall be prepared by the Executive Director and shall be approved by the Executive Board. The Organization's fiscal year shall be from January 1 to December 31.
- (b) Each Member may make voluntary contributions to the Organization by providing or making available such funds as it deems appropriate. Such contributions may be made directly to the Organization or by paying the Organization's contractors. Contributions shall be made by cash deposit, escrow, letter of credit, promissory note, or by such other legal means and in such currency as may be agreed between the Organization and the contributor.
- (c) The Organization may seek contributions from such other public or private sources as it deems appropriate.
- (d) The Organization shall establish an account or accounts to receive funds from Members or other sources, including independent accounts for those funds to be reserved for specific projects and the administration of the Organization. Interest or dividends accruing on such accounts shall be reinvested for activities of the Organization. Excess funds shall be distributed as set forth in Article III(i).

ARTICLE XI

- (a) Members may make available to the Organization or its contractors goods, services, equipment, and facilities that may be of assistance in achieving the purposes of the Organization.
- (b) The Organization may accept from such other public or private sources as it deems appropriate any goods, services, equipment, and facilities that may be of assistance in achieving the purposes of the Organization.
- (c) The Executive Director shall be responsible for valuing in-kind contributions to the Organization, whether direct or indirect. Members shall cooperate with the Executive Director in the valuation process, including by providing regular reports of in-kind contributions and access to records necessary to verify the value of such contributions.

- (d) In the event of a dispute concerning the value of an in-kind contribution, the Executive Board shall review the matter and render a decision.

ARTICLE XII

The Executive Director shall submit to the Executive Board for its approval an annual report on the activities of the Organization, which shall include a description of the status of the LWR project and other projects, a comparison of planned activities to completed activities, and an audited statement of the Organization's accounts. Upon the approval of the Executive Board, the Executive Director shall distribute the annual report to the Members. The Executive Director shall submit to the Executive Board such other reports as may be required by the Executive Board.

ARTICLE XIII

- (a) To carry out its purposes and functions, the Organization shall possess legal capacity and, in particular, the capacity to: (1) contract; (2) lease or rent real property; (3) acquire and dispose of personal property; and (4) institute legal proceedings. Members may accord the Organization such legal capacity in accordance with their respective laws and regulations where necessary for the Organization to carry out its purposes and functions.
- (b) No Member shall be liable, by reason of its status or participation as a Member, for acts, omissions, or obligations of the Organization.
- (c) Information provided to the Organization by a Member shall be used exclusively for the purposes of the Organization and shall not be publicly disclosed without the express consent of that Member.
- (d) Implementation of this Agreement in the Members' territories shall be in accordance with the laws and regulations, including budgetary appropriations, of such Members.

ARTICLE XIV

- (a) This Agreement shall enter into force upon signature by the original Members.
- (b) States approved by the Executive Board for membership in accordance with Article V(b) may become Members by submitting an instrument of acceptance

of this Agreement to the Executive Director, which shall become effective on the date of receipt by the Executive Director.

- (c) This Agreement may be amended, terminated, or suspended by written agreement of all Executive Board Members, or, if such agreement is not achievable by written agreement of a majority of the Executive Board Members.
- (d) Amendment to this Agreement shall enter into force ninety days after the date on which the written agreement to amend is registered with the Executive Director. Any Executive Board Member that does not enter into that written agreement may withdraw from this Agreement with the Executive Director and the entry into force of the amendment by giving written notice of withdrawal to the Executive Director, with such withdrawal becoming effective upon receipt of the notice by the Executive Director notwithstanding the provisions of Article XV.

ARTICLE XV

A Member may withdraw from this Agreement at any time by giving written notice of withdrawal to the Executive Director. The withdrawal shall become effective ninety days after receipt of the notice of withdrawal by the Executive Director.

DONE at New York, this ninth day of March, 1995, in three copies in the English language.