



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

Protocol between the Korean Peninsula Energy Development Organization and the Government of the Democratic People's Republic of Korea on Actions in the Event of Nonpayment with Respect to Financial Obligations

The Korean Peninsula Energy Development Organization (hereinafter referred to as "KEDO") and the Government of the Democratic People's Republic of Korea (the Democratic People's Republic of Korea is hereinafter referred to as the "DPRK"),

Reaffirming that KEDO and the DPRK shall faithfully perform their respective obligations under the Agreement on Supply of the Light-Water Reactor Project to the DPRK between KEDO and the Government of the DPRK, signed on December 15, 1995 (hereinafter referred to as the "Agreement") and protocols to the Agreement, and

Desiring to conclude a protocol in accordance with Article XVI, paragraph 3, of the Agreement concerning actions to be taken in the event of late payment or nonpayment with respect to financial obligations incurred in connection with implementing the Agreement (hereinafter referred to as the "Protocol"),

Have agreed as follows:

ARTICLE 1

DEFINITIONS

For the purpose of the Protocol:

1. "Party" means either KEDO or the DPRK, and "Parties" means KEDO and the DPRK;
2. "Financial Obligation" means the payment commitment of one Party to make a payment on any one Payment Date, as specified in paragraph 3 of this Article, to the other Party in connection with the light-water reactor

(hereinafter referred to as "LWR") project under the Agreement, its protocols, or other written agreements between KEDO and the DPRK under the Agreement or its protocols. A payment commitment is a Financial Obligation regardless of whether the commitment is to be paid in cash, cash equivalents, or through the transfer of goods;

3. "Payment Date" means the payment date for a Financial Obligation, specified in the Agreement, its protocols, or other written agreements between KEDO and the DPRK under the Agreement or its protocols;
4. "Nonpayment" means the failure to pay a Financial Obligation on or before the Payment Date;
5. "Noncomplying Party" means the Party that has failed to pay a Financial Obligation and/or a Penalty in accordance with the terms specified in the Agreement, its protocols, or other written agreements between KEDO and the DPRK under the Agreement or its protocols from which the Financial Obligation and/or the Penalty is incurred;
6. "Penalty" or "Penalties" means the monetary penalties payable by the Noncomplying Party to the other Party in the event of Nonpayment.

ARTICLE 2

GENERAL PRINCIPLES

1. Each Party shall pay all Financial Obligations in a timely manner, on or before the Payment Date and under the other payment terms set forth in the Agreement, its protocols, or other written agreements between KEDO and the DPRK under the Agreement or its protocols.
2. In the event of Nonpayment of a Financial Obligation by the Noncomplying Party, the other Party shall have the right to assess and apply a Penalty or Penalties against the Noncomplying Party as set forth in Articles 3 and 4 of the Protocol.

ARTICLE 3

ASSESSMENT AND APPLICATION OF NONPAYMENT PENALTY

1. If one Party fails to pay the full amount of a Financial Obligation on or before the Payment Date, the other Party shall assess and apply a Nonpayment

Penalty against the Noncomplying Party at a rate equal to the Basic Interest Rate specified in the Annex of the Protocol plus 3% per annum, or 2% per annum if applicable, applied to such outstanding amount for the period from and including the Payment Date to but excluding the date the Financial Obligation and Nonpayment Penalty are paid.

2. Each Party shall be notified by the other Party in a timely manner of the Basic Interest Rate referred to in paragraph 1 above based on the currency or currencies in which the Financial Obligation is constituted.
3. A Financial Obligation and a Nonpayment Penalty shall be payable to the Party to which the Financial Obligation and Nonpayment Penalty are owed at any time after the Payment Date.

ARTICLE 4

ASSESSMENT AND APPLICATION OF ACCELERATION

1. If one Party fails to pay the full amount of a Financial Obligation on or before the Payment Date, the other Party may thirty days after the Payment Date or at any time thereafter, by written notice to the Noncomplying Party declare all or part of any other Financial Obligations covered by the same Agreement, its protocols, or other written agreements between KEDO and the DPRK under the Agreement or its protocols (hereinafter referred to as the "Accelerated Amount") to be immediately due and payable.
2. Upon receipt of the written notice, such Accelerated Amount shall be immediately due and payable without further presentment, demand, protest or other formality of any kind, and deemed to be a Financial Obligation for which the date of receipt of such written notice shall be regarded as a Payment Date unless otherwise specified in such written notice.

ARTICLE 5

CONSULTATIONS

KEDO and the DPRK shall have consultations in a timely manner to ensure the expeditious and smooth implementation of the Protocol. Such consultations, which shall include financial experts from KEDO and the DPRK as needed, shall occur upon the request of either Party at any mutually agreed place.

ARTICLE 6

GENERAL PROVISIONS

1. The Protocol shall enter into force on the date of its signature.
2. The Annex of the Protocol shall be an integral part of the Protocol.
3. The Protocol may be amended by written agreement between the Parties. Any amendment shall enter into force on the date of its signature.
4. Article XV of the Agreement shall apply to any disputes arising under the Protocol.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed the Protocol.

Done at New York City on the 24th of June, 1997, in duplicate in the English language.

For the Korean Peninsula Energy
Development Organization

For the Government of the Democratic
People's Republic of Korea

Stephen W. Bosworth
Executive Director
Korean Peninsula Energy
Development Organization

Ho Jong
Ambassador-at-Large
Ministry of Foreign Affairs
Democratic People's Republic of Korea

ANNEX

The "Basic Interest Rate" referenced in Article 3, paragraph 1 means the following interest rates, as applicable:

- (1) the interest rate on loan or debt incurred by a Party for the purpose of providing goods or services which have resulted in the Noncomplying Party's Financial Obligation; or
- (2) the interest rate on additional loan or debt incurred by a Party as needed to repay an existing loan or debt that cannot otherwise be repaid because the Noncomplying Party failed to pay the full amount of a Financial Obligation on or before the Payment Date; or
- (3) the 6-month certificate of deposit rate that a Party could have earned if the Noncomplying Party had paid the full amount of a Financial Obligation on the Payment Date. The 3% or 2% per annum referenced in Article 3, paragraph 1 shall not be applied to this sub-paragraph.

The interest rate described in sub-paragraph (3) shall be used with respect to a Financial Obligation or portions of a Financial Obligation to which neither sub-paragraph (1) nor sub-paragraph (2) is applicable.

The interest rate referred to in sub-paragraph (1) and (2) shall not exceed a rate that a Party that incurs the loan or debt deems commercially and generally available at the time the loan or debt is incurred. Such Party shall notify the other Party, in a timely manner, of such rate and of interest rates publicly available at the time the loan or debt is incurred.

In the event that different interest rates from one or more of the categories described in the sub-paragraphs above are applicable with regard to a Financial Obligation, the Basic Interest Rate based on the applicable currency or currencies shall be a weighted average of all applicable interest rates or weighted averages of the relevant interest rates currency by currency, respectively.