

# A BILL

## FOR

AN ACT TO ENABLE EFFECT TO BE GIVEN IN THE FEDERAL REPUBLIC OF NIGERIA TO THE AGREEMENT BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND REPUBLIC OF SOUTH KOREA FOR THE AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS AND FOR RELATED MATTERS, 2016

*Sponsors:*

*Hon. Yakub Abiodun Balogun*

*Hon. Aliyu Danladi*

[ ] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

1           1. As from the commencement of this Bill, the provisions of the  
2 Agreement on Avoidance of Double Taxation and Prevention of Fiscal  
3 Evasion with respect to Taxes on Income and Capital Gains between the  
4 Federal Republic of Nigeria and the Republic of South Korea which are set  
5 out in the schedule to this Bill shall, subject as there under provided, have the  
6 force of law and shall be given full recognition and effect and be applied by  
7 all Authorities and persons exercising Legislative, Executive and Judicial  
8 powers in the Federal Republic of Nigeria.

Enforcement of the Agreement on Avoidance of double Taxation between the Federal Republic of Nigeria and Republic of South Korea

9           2. This Bill may be cited as the Agreement on Avoidance of  
10 Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on  
11 Income and Capital Gains between the Federal Republic of Nigeria and the  
12 Republic of South Korea (Ratification and Enforcement) Bill, 2016.

Short Title

1

## SCHEDULE

2

AGREEMENT BETWEEN THE REPUBLIC OF SOUTH KOREA AND THE

3

FEDERAL REPUBLIC OF NIGERIA FOR THE AVOIDANCE OF DOUBLE

4

TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO

5

TAXES ON INCOME AND CAPITAL GAINS

6

The Government of the Republic of South Korea and the Government of the

7

Federal Republic of Nigeria, desiring to conclude an Agreement for the

8

Avoidance of Double Taxation and the Prevention of Fiscal Evasion with

9

respect to Taxes on Income and Capital Gains,

10

Have agreed as follows:

11

AGREEMENT BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE

12

REPUBLIC OF SOUTH KOREA FOR THE AVOIDANCE OF DOUBLE TAXATION

13

AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON

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INCOME AND CAPITAL GAINS

15

The Government of the Republic of South Korea, Federal Republic of Nigeria

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and the Government of the Desiring to conclude an Agreement for the

17

Avoidance of Double Taxation and the Prevention of Fiscal Evasion with

18

respect to Taxes on Income and Capital Gains,

19

Have agreed as follows:

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## CHAPTER I - SCOPE OF THE AGREEMENT

21

## ARTICLE I - PERSONS COVERED

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This Agreement shall apply to persons who are residents of one or both of the

23

Contracting States.

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## ARTICLE 2 - TAXES COVERED

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1. The taxes to which this Agreement shall apply are:

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(a) in the case of Nigeria:

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(i) the personal income tax;

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(ii) the companies income tax;

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(iii) the petroleum profits tax;

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(iv) the capital gains tax;

- 1 (v) the education tax; and  
2 (vi) other taxes on income and capital gains (hereinafter referred to  
3 as "Nigerian tax"); (b) in the case of South Korea:  
4 (i) the income tax;  
5 (ii) the corporation tax;  
6 (iii) the inhabitant tax where charged by reference to the income  
7 tax or the corporation tax;  
8 (iv) the special tax for rural development; and  
9 (v) other taxes on income and capital gains (hereinafter referred to  
10 as "Korean tax").

11 This Agreement shall apply also to any identical or substantially similar  
12 taxes which are imposed after the date of signature of the Agreement in  
13 addition to, or in place of, the existing taxes. The competent authorities of  
14 the Contracting States shall notify each other of any substantial changes  
15 which have been made in their respective taxation laws.

## 16 CHAPTER II - DEFINITIONS

### 17 ARTICLE 3 - GENERAL DEFINITIONS

18 1. For the purposes of this Agreement, unless the context  
19 otherwise requires:

20 (a) the term "Nigeria" means the Federal Republic of Nigeria  
21 including any area outside the territorial waters of the Federal Republic  
22 Nigeria which, in accordance with international law, has been or may  
23 hereafter be designated under the laws of the Federal Republic of Nigeria  
24 concerning the continental shelf as an area within which the rights of the  
25 Federal Republic of Nigeria with respect to the sea bed, its subsoil, its  
26 superjacent waters and their natural resources may be exercised now and in  
27 the future;

28 (b) the term "Korea" means the territory of the Republic of South  
29 Korea including any area adjacent to the territorial sea of the Republic of  
30 South Korea which, in accordance with international law, has been or may

1 hereafter be designated under the laws of the Republic of South Korea as an  
2 area within which the sovereign rights of the Republic of South Korea with  
3 respect to the waters, sea-bed and sub-soil, and their natural resources may be  
4 exercised now and in the future;

5 (c) the terms “a Contracting State and “the other Contracting State”  
6 mean Nigeria or Korea, as the context requires;

7 (d) the term “person” includes an individual, a company and any other  
8 body of persons; the term company means any body corporate or any entity  
9 which is treated as a body corporate for tax purposes under the laws of each  
10 Contracting State;

11 (f) the term “enterprise” applies to the carrying on of any business;

12 (g) the terms “enterprise of a Contracting State” and “enterprise of the  
13 other Contracting State” mean respectively an enterprise carried on by a  
14 resident of a Contracting State and an enterprise carried on by a resident of the  
15 other Contracting State;

16 (h) the term “national,” in relation to a Contracting State, means:

17 (i) any individual possessing the nationality or the citizenship of a  
18 Contracting State; and

19 (ii) any legal person, partnership or association deriving its status as  
20 such from the laws in force in that Contracting State;

21 (i) the term “international traffic” means any transport by a ship or  
22 aircraft operated by an enterprise that has its place of effective management in a  
23 Contracting State, except when the ship or aircraft is operated solely between  
24 places in the other Contracting State;

25 (f) the term “competent authority” means, in the case of Nigeria, the  
26 Minister of Finance or his authorized representative, and in the case of South  
27 Korea, the Minister of Finance and Economy or his authorized representative;  
28 and

29 (k) the term “business” includes the performance of professional  
30 services and of other activities of an independent character.





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

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

8 ARTICLE 5 - PERMANENT ESTABLISHMENT

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

12 2. The term "permanent establishment" includes especially:

13 (a) a place of management;

14 (b) a branch;

15 (c) an office;

16 (d) a factory;

17 (e) a workshop; and

18 (f) a mine, an oil or gas well; a quarry or any other place relating to the  
19 exploration for or the exploitation of natural resources.

20 3. The term "permanent establishment" also encompasses:

21 (a) a building site, a construction, assembly or installation project or  
22 supervisory activities in connection therewith, but only if such site, project or  
23 activities last more than six months;

24 (b) the furnishing of services, including technical, management or  
25 consultancy services, by an enterprise through employees or other personnel  
26 engaged by the enterprise for such purpose, but only if activities of that nature  
27 continue for the same project within a Contracting State for a period or periods  
28 aggregating more than six months within any twelve-month period; and

29 (c) a fixed place of business used as a sales outlet notwithstanding the  
30 fact that such fixed place of business is otherwise maintained for any of the

1 activities mentioned in paragraph 4 of this Article.

2 4. Notwithstanding the preceding provisions of this Article, the  
3 term “permanent establishment” shall not be deemed to include:

4 (a) the use of facilities solely for the purpose of storage, display or  
5 delivery of goods or merchandise' belonging to the enterprise;

6 (b) the maintenance of a stock of goods or merchandise belonging  
7 to the enterprise solely for the purpose of storage, display or delivery;

8 (c) the maintenance of a stock of goods or merchandise belonging  
9 to the enterprise solely for the purpose of processing by another enterprise;

10 (d) the maintenance of a fixed place of business solely for the  
11 purpose of purchasing goods or merchandise, or of collecting information,  
12 for the enterprise;

13 (e) the maintenance of a fixed place of business solely for the  
14 purpose of carrying on, for the enterprise, any other activity of a preparatory  
15 or auxiliary character; and

16 (f) the maintenance of a fixed place of business solely for any  
17 combination of activities mentioned in subparagraphs (a) to (e), provided  
18 that the overall activity of the fixed place of business resulting from this  
19 combination is of a preparatory or auxiliary character.

20 5. Notwithstanding the provisions of paragraphs 1 and 2, where a  
21 person, other than an agent of an independent status to whom paragraph 6  
22 applies, is acting in a Contracting State on behalf of an enterprise of the other  
23 Contracting State, that enterprise shall be deemed to have a permanent  
24 establishment in the first-mentioned Contracting State in respect of any  
25 activities which that person undertakes for the enterprise, if such a person  
26 has and habitually exercises in that State an authority to conclude contracts  
27 in the name of the enterprise, unless the activities of such person are limited  
28 to those specified in paragraph 4 which, if exercised through a fixed place of  
29 business, would not make this fixed place of business a permanent  
30 establishment under provisions of that paragraph.







1 permanent establishment is situated or elsewhere.

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

5 5. For the purposes of the preceding paragraphs, the profits to be  
6 attributed to the permanent establishment shall be determined by the same  
7 method year by year unless there is a good and sufficient reason to the contrary.

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

11 ARTICLE 8 - SHIPPING AND AIR TRANSPORT

12 1. Profits from the operation of ships or aircraft in international  
13 traffic shall be taxable only in the Contracting State in which the place of  
14 effective management of the enterprise is situated.

15 2. However, if such operation in international traffic is carried on by  
16 an enterprise of only one of the Contracting States, paragraph 1 will not be  
17 applicable. In such a case, the tax charged shall not exceed the lesser of:

18 (a) one per cent of such earnings; and

19 (b) the lower amount of Nigerian tax that would have been imposed  
20 on such earnings if they had been derived by an enterprise from the operation of  
21 ships or aircraft in international traffic in any third State.

22 For the purpose of this paragraph, "earnings" means total income arising from  
23 the carriage of passenger, mail, livestock or goods loaded or shipped in the  
24 other State, less refunds and payment of wages and salaries of ground staff with  
25 respect to such operations in international traffic.

26 3. If the place of effective management of a shipping enterprise is  
27 aboard a ship, then it shall be deemed to be situated in the Contracting State in  
28 which the home harbour of the ship is situated, or, if there is no such home  
29 harbour, in the Contracting State of which the operator of the ship is a resident.

30 4. The provisions of paragraph 1 shall also apply to profits from the

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

2 ARTICLE 9 - ASSOCIATED ENTERPRISES

3 1. Where:

4 (a) an enterprise of a Contracting State participates directly or  
5 indirectly in the management, control or capital of an enterprise of the other  
6 Contracting State; or

7 (b) the same persons participate directly or indirectly in the  
8 management, control or capital of an enterprise of a Contracting State and an  
9 enterprise of the other Contracting State, and in either case conditions are  
10 made or imposed between the two enterprises in their commercial or  
11 financial relations which differ from those which would be made between  
12 independent enterprises, then any profits which would, but for those  
13 conditions, have accrued to one of the enterprises, but, by reason of those  
14 conditions, have not so accrued, may be included in the profits of that  
15 enterprise and taxed accordingly.

16 2. Where a Contracting State includes in the profits of an  
17 enterprise of that State-and taxes accordingly-profits on which an enterprise  
18 of the other Contracting State has been charged tax in that other State and the  
19 profits so included are profits which would have accrued to the enterprise of  
20 the first, mentioned State if the conditions made between the two enterprises  
21 had been those which would have been made between independent  
22 enterprises, then that other State shall make an appropriate adjustment to the  
23 amount of the tax charged therein on those profits. In determining such  
24 adjustment, due regard shall be had to the other provisions of this Agreement  
25 and the taxation authorities of the Contracting States shall, if necessary,  
26 consult each other.

27 ARTICLE 10 - DIVIDENDS

28 1. Dividends paid by a company which is a resident of a  
29 Contracting State to a resident of the other Contracting State may be taxed in  
30 that other State.



1                   2. However, such dividends may also be taxed in the Contracting  
2 State of which the company paying the dividends is a resident and according to  
3 the laws of that State, but if the recipient is the beneficial owner of the  
4 dividends the tax so charged shall not exceed:

5                   (a) 7.5 per cent of the gross amount of the dividends if the beneficial  
6 owner is a company (other than a partnership) which holds directly at least 10  
7 per cent of the capital of the company paying the dividends;

8                   (b) 10 per cent of the gross amount of the dividends in all other cases.

9 The competent authorities of the Contracting States shall by mutual agreement  
10 settle the mode of application of these limitations.

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

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

19                   4. The provisions of paragraphs 1 and 2 shall not apply if the  
20 beneficial owner of the dividends, being a resident of a Contracting State,  
21 carries on business in the other Contracting State of which the company paying  
22 the dividends is a resident through a permanent establishment situated therein,  
23 or performs in that other State independent personal services from a fixed base  
24 situated therein, and the holding in respect of which the dividends are paid is  
25 effectively connected with such permanent establishment or fixed base. In such  
26 cases the provisions of Article 7 or Article 14, as the case may be, shall apply.

27                   5. Where a company which is a resident of a Contracting State  
28 derives profits or income from the other Contracting State, that other State may  
29 not impose any tax on the dividends paid by the company, except insofar as  
30 such dividends are paid to a resident of that other State or insofar as the holding



1 in respect of which the dividends are paid is effectively connected with a  
2 permanent establishment or fixed base situated in that other State, nor  
3 subject the company's undistributed profits to a tax on the company's  
4 undistributed profits, even if the dividends paid or the undistributed profits  
5 consist wholly or partly of profits or income arising in that other State.

#### 6 ARTICLE 11 - INTEREST

7 1. Interest arising in a Contracting State and paid to a resident of  
8 the other Contracting State may be taxed in that other State.

9 2. However, such interest may also be taxed in the Contracting  
10 State in which it arises and according to the laws of that State, but if the  
11 recipient is the beneficial owner of the interest, the tax so charged shall not  
12 exceed 7.5 per cent of the gross amount of interest. The competent  
13 authorities of the Contracting States shall by mutual agreement settle the  
14 mode of application of these limitations.

15 3. Notwithstanding the provisions of paragraph 2, interest arising  
16 in a Contracting State and derived by the Government of the other  
17 Contracting State including a political subdivision or a local authority  
18 thereof, the central bank of that other Contracting State or any financial  
19 institutions owned by that Government, or by any resident of the other  
20 Contracting State with respect to debt-claims, guaranteed or indirectly  
21 financed by the Government of that other Contracting State including  
22 political subdivisions and local authorities thereof, the Central Bank of that  
23 other Contracting State or any financial institutions owned by that  
24 Government shall be exempt from tax in the first-mentioned Contracting  
25 State.

26 4. For the purpose of paragraph 3, the terms "the Central Bank"  
27 and "financial institutions owned by that government" mean:

28 (a) in the case of Nigeria:

29 (i) the Central Bank of Nigeria; and

30 (ii) such other financial institution the capital of which is owned by

1 the Government of the Federal Republic of Nigeria as may be agreed upon  
2 from time to time between the Governments of the two Contracting States;

3 (b) in the case of South Korea:

4 (i) the Central Bank (the Bank of Korea);

5 (ii) the Korea Export-Import Bank;

6 (iii) the Korea Development Bank;

7 (iv) the Korea Export Insurance Corporation;

8 (v) the Korea Investment Corporation; and

9 (vi) such other financial institution the capital of which is owned by  
10 the Government of the Republic of South Korea as may be agreed upon from  
11 time to time between the Governments of the two Contracting States.

12 5. The term "interest" as used in this Article means income from debt-  
13 claims of every kind, whether or not secured by mortgage, and whether or not  
14 carrying a right to participate in the debtors profits, and in particular, income  
15 from government securities and income from bonds or debentures including  
16 premiums and prizes attaching to such securities, bonds or debentures. Penalty  
17 charges for late payment shall not be regarded as interest for the purpose of this  
18 Article.

19 6. The provisions of paragraphs 1, 2 and 3 of this Article shall not  
20 apply if the beneficial owner the interest, being a resident of a Contracting  
21 State, carries on business in the other Contracting State in which the interest  
22 arises through a permanent establishment situated therein, or performs in that  
23 other State independent personal services from a fixed base situated therein,  
24 and the debt claim in respect of which the interest is paid is effectively  
25 connected with such permanent establishment or fixed base. In such cases the  
26 provisions of Article 7 or Article 14, as the case may be, shall apply.

27 7. Interest shall be deemed to arise in a Contracting State when the  
28 payer is that State itself, a political subdivision, a local authority or a resident of  
29 that State. Where, however, the person paying the interest, whether he is a  
30 resident of a Contracting State or not, has in a Contracting State a permanent

1 establishment or a fixed base in connection with which the indebtedness on  
2 which the interest is paid was incurred, and such interest is borne by such  
3 permanent establishment or fixed base, then such interest shall be deemed to  
4 arise in the State in which the permanent establishment or fixed base is  
5 situated.

6 8. Where, by reason of a special relationship between the payer  
7 and the beneficial owner or between both of them and some other person, the  
8 amount of the interest exceeds for whatever reasons the amount which  
9 would have been agreed upon by the payer and the beneficial owner in the  
10 absence of such relationship, the provisions of this Article shall apply only  
11 to the last- mentioned amount. In such case, the excess part of the payment  
12 shall remain taxable according to the laws of each Contracting State, due  
13 regard being had to the other provisions of this Agreement.

#### 14 ARTICLE 12 - ROYALTIES

15 1. Royalties arising in a Contracting State and beneficially owned  
16 by a resident of the other Contracting State shall be taxable only in that other  
17 State.

18 2. However such royalties may also be taxed in the Contracting  
19 State from which they are derived and according to the law of that State, but  
20 where the beneficial owner of the royalties is subject to tax thereon in the  
21 other State, the tax so charged shall not exceed 7.5 per cent of the gross  
22 amount of the royalties.

23 3. The term 'royalties' as used in this Article means payments of  
24 any kind received as consideration for the use of, or the right to use any  
25 copyright of literary, artistic or scientific work including cinematograph  
26 films or films, tapes and other means of image or sound reproduction, for the  
27 use of or the right to use computer software, any patent, trademark, design or  
28 model, plan, secret formula or process, or for the use of or the right to use  
29 industrial, commercial or scientific equipment, or for information  
30 concerning industrial, commercial or scientific experience.





1 business property of a permanent establishment which an enterprise of a  
2 Contracting State has in the other Contracting State or of movable property  
3 pertaining to a fixed base available to a resident of a Contracting State in the  
4 other Contracting State for the purpose of performing independent personal  
5 services, including such gains from the alienation of such a permanent  
6 establishment (alone or with the whole enterprise) or of such fixed base,  
7 may be taxed in that other State.

8 3. Gains from the alienation of ships or aircraft operated in  
9 international traffic or movable property pertaining to the operation of such  
10 ships or aircraft shall be taxable only in the Contracting State in which the  
11 place of effective management of the enterprise is situated.

12 4. Gains derived by a resident of a Contracting State from the  
13 alienation of shares deriving more than 50 per cent of their value directly or  
14 indirectly from immovable property situated in the other Contracting State  
15 may be taxed in that other State.

16 5. Gains from the alienation of any property other than those  
17 referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting  
18 State of which the alienator is a resident.

19 ARTICLE 14 - INDEPENDENT PERSONAL SERVICES

20 1. Income derived by a resident of a Contracting State in respect of  
21 professional services or other activities of an independent character shall be  
22 taxable only in that State unless he has a fixed base regularly available to  
23 him in the other Contracting State for the purpose of performing his  
24 activities. If he has such a fixed base, the income may be taxed in the other  
25 State but only so much of it as is attributable to that fixed base.

26 2. The term professional services includes especially independent  
27 scientific, literary, artistic, educational or teaching activities as well as the  
28 independent activities of physicians, lawyers, engineers, architects, dentists  
29 and accountants.



1 from his personal activities as such exercised in the other Contracting State,  
2 may be taxed in that other State.

3 2. Where income in respect of personal activities exercised by an  
4 entertainer or a sports person in his capacity as such accrues not to the  
5 entertainer or sports person himself but to another person, that income may,  
6 notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the  
7 Contracting State in which the activities of the entertainer or sportsperson  
8 are exercised.

9 ARTICLE 18 - PENSIONS

10 Subject to the provisions of paragraph 2 of Article 19, pensions and other  
11 similar remuneration paid to a resident of a Contracting State in  
12 consideration of past employment shall be taxable only in that State.

13 ARTICLE 19 - GOVERNMENT SERVICE

14 1. (a) Salaries, wages and other similar remuneration paid by a  
15 Contracting State or a political subdivision or a local authority thereof to an  
16 individual in respect of services rendered to that State or subdivision or  
17 authority shall be taxable only in that State;

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

21 (i) is a national of that State; or

22 (ii) did not become a resident of that State solely for the purpose of  
23 rendering the services.

24 2. (a) Notwithstanding the provisions of paragraph 1, pensions and  
25 other similar remuneration paid by, or out of funds created by, a Contracting  
26 State or a political subdivision or a local authority thereof to an individual in  
27 respect of services rendered to that State or subdivision or authority shall be  
28 taxable only in that State;

29 (b) However, such pensions and other similar remuneration shall  
30 be taxable only in the other Contracting State if the individual is a resident

1 of, and a national of, that State.

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

4 (a) in the case of Nigeria:

5 the Central Bank of Nigeria or other institutions as may be specified and agreed  
6 upon in letters exchanged by the competent authorities of the Contracting  
7 States, provided such banks and institutions perform functions of a  
8 governmental nature and only engage in non-profit-making activities; and

9 (b) in the case of South Korea:

10 the Bank of Korea, the Korea Export-Import Bank, the Korea Export Insurance  
11 Corporation, the Korea Development Bank, the Korea Trade Investment  
12 Promotion Agency or other institutions as may be specified and agreed upon in  
13 letters exchanged by the competent authorities of the Contracting States,  
14 provided such banks and institutions perform functions of a governmental  
15 nature and only engage in non-profit-making activities.

16 4. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries,  
17 wages, pensions, and other similar remuneration in respect of services  
18 rendered in connection with business carried on by a Contracting State or a  
19 political subdivision or a local authority thereof.

#### 20 ARTICLE 20 - STUDENTS AND APPRENTICES

21 1. An individual who immediately before visiting a Contracting State  
22 is or was a resident of the other Contracting State and who is present in the first-  
23 mentioned State primarily as a student at a recognized university, college,  
24 school or other similar educational institution in the first-mentioned State or as  
25 a business or technical apprentice therein, from the date of his first arrival in the  
26 first-mentioned State in connection with that visit, shall be exempt from tax in  
27 that first-mentioned State on:

28 (a) all remittances from abroad for the purposes of his maintenance,  
29 education and training; and

30 (b) any remuneration for personal services rendered in the first-



1 mentioned State with a view to supplementing the resources available to him  
2 for such purposes.

3 2. An individual who was a resident of a Contracting State  
4 immediately before visiting the other Contracting State and who is  
5 temporarily present in that other State solely for the purpose of study,  
6 research or training, as a recipient of a grant, allowance or award from a  
7 scientific, educational, religious or charitable organization or under a  
8 technical assistance programme entered into by the Government of a  
9 Contracting State shall, from the date of his first arrival in that other State in  
10 connection with that visit, be exempt from tax in that other State:

11 (a) on the amount of such grant, allowance or award; and

12 (b) on all remittances from abroad for the purposes of his  
13 maintenance, education or training.

#### 14 ARTICLE 21 - TEACHERS AND RESEARCHERS

15 1. A professor or teacher who visits one of the Contracting States  
16 for the purpose of teaching or engaging in research at a university or any  
17 other similarly recognized educational institution in that State and who,  
18 immediately before that visit was a resident of the other Contracting State,  
19 shall be exempted from tax by the first-mentioned State in respect of any  
20 remuneration received for such teaching or research for a period not  
21 exceeding two years from the date of his first arrival in that State for such  
22 purpose. During the said period of two years, the other Contracting State  
23 shall also exempt him from tax in respect of such remuneration from the  
24 first-mentioned State in respect of the teaching or research.

25 2. This Article shall not apply to income from research if such  
26 research is undertaken not in the public interest but primarily for the benefit  
27 of a specific person or persons.

#### 28 ARTICLE 22 - OTHER INCOME

29 1. Items of income of a resident of a Contracting State, wherever  
30 arising, not dealt with in the foregoing Articles of this Agreement shall be

1 taxable only in that State.

2 2. The provisions of paragraph 1 shall not apply to income, other than  
3 income from immovable property as defined in paragraph 2 of Article 6, if the  
4 recipient of such income, being a resident of a Contracting State, carries on  
5 business in the other Contracting State through a permanent establishment  
6 situated therein, or performs in that other State independent personal services  
7 from a fixed base situated therein, and the right or property in respect of which  
8 the income is paid is effectively connected with such permanent establishment  
9 or fixed base. In such case the provisions of Article 7 or Article 14, as the case  
10 may be, shall apply.

11 CHAPTER IV - METHODS FOR ELIMINATION OF DOUBLE TAXATION

12 ARTICLE 23 - ELIMINATION OF DOUBLE TAXATION

13 1. Subject to the provisions of Nigerian tax law regarding the  
14 allowance as a credit against Nigerian tax of tax payable in any country other  
15 than Nigeria (which shall not affect the general principle hereof):

16 (a) the Korean tax payable (excluding, in the case of dividends, tax  
17 payable in respect of profits out of which the dividend is paid) under the laws of  
18 South Korea and in accordance with this Agreement, whether directly or by  
19 deduction, in respect of income from sources within South Korea, shall be  
20 allowed as a credit against Nigerian tax payable in respect of that income. The  
21 credit shall not, however, exceed that proportion of Nigerian tax which the  
22 income from sources within South Korea bears to the entire income subject to  
23 Nigerian tax;

24 (b) in the case of dividends paid by a company which is a resident of  
25 South Korea to a company which is a resident of Nigeria and which owns not  
26 less than 10 per cent of the shares of the company paying the dividend, the  
27 credit shall take into account (in addition to any Korean tax for which credit  
28 may be allowed under the provisions of subparagraph (a) of this paragraph) the  
29 Korean tax payable by the company paying the dividend in respect of the  
30 profits out of which such dividend is paid.

1                   2. Subject to the provisions of Korean tax law regarding the  
2 allowance as, a credit against Korean tax of tax payable in any country other  
3 than Korea (which shall not affect the general principle hereof):

4                   (a) the Nigerian tax payable (excluding, in the case of dividends,  
5 tax payable in respect of profits out of which the dividend is paid) under the  
6 laws of Nigeria and in accordance with this Agreement, whether directly or  
7 by deduction, in respect of income from sources within Nigeria, shall be  
8 allowed as a credit against Korean tax payable in respect of that income. The  
9 credit shall not, however, exceed that proportion of Korean tax which the  
10 income from sources within Nigeria bears to the entire income subject to  
11 Korean tax;

12                   (b) in the case of dividends paid by a company which is a resident  
13 of Nigeria to a company which is a resident of Korea and which owns not  
14 less than 10 per cent of the shares of the company paying the dividend, the  
15 credit shall take into account (in addition to any Nigerian tax for which  
16 credit may be allowed under the provisions of subparagraph (a) of this  
17 paragraph) the Nigerian tax payable by the company paying the dividend in  
18 respect of the profits out of which such dividend is paid.

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

28 This provision shall apply for a period of ten years starting from the first day  
29 of the calendar year when this Agreement enters into force.

30                   4. Notwithstanding paragraph 3 of Article 23, a resident of a

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

7 (a) whether any arrangements have been entered into by any person  
8 for the purpose of taking advantage of paragraph 3 of Article 23 for the benefits  
9 of that person or any other person;

10 (b) whether any benefit accrues or may accrue to any person who is  
11 neither a resident of a Contracting State nor a resident of the other Contracting  
12 State;

13 (c) the prevention of fraud, evasion or avoidance of the taxes to which  
14 this Agreement applies; or

15 (d) any other matter which the competent authorities consider  
16 relevant in the particular circumstances of the case including any submissions  
17 from a resident of either Contracting State.

18 CHAPTER V - SPECIAL PROVISIONS

19 ARTICLE 24 - NON-DISCRIMINATION

20 1. Nationals of a Contracting State shall not be subjected in the other  
21 Contracting State to any taxation or any requirement connected therewith,  
22 which is other or more burdensome than the taxation and connected  
23 requirements to which nationals of that other State in the same circumstances  
24 are or may be subjected. This provision shall, notwithstanding the provisions  
25 of Article 1, also apply to persons who are not residents of one or both of the  
26 Contracting States.

27 2. The taxation on a permanent establishment which an enterprise of  
28 a Contracting State has in the other Contracting State shall not be less  
29 favourably levied in that other State than the taxation levied on enterprises of  
30 that other State carrying on the same activities.



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

5                   4. Except where the provisions of Article 9, paragraphs 7 and 8 of  
6 Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other  
7 disbursements paid by an enterprise of a Contracting State to a resident of  
8 the other Contracting State shall, for the purpose of determining the taxable  
9 profits of such enterprise, be deductible under the same conditions as if they  
10 had been paid to a resident of the first-mentioned State.

11                  5. Enterprises of a Contracting State, the capital of which is wholly  
12 or partly owned or controlled, directly or indirectly, by one or more residents  
13 of the other Contracting State, shall not be subjected in the first-mentioned  
14 State to any taxation or any requirement connected therewith which is other  
15 or more burdensome than the taxation and connected requirements to which  
16 other similar enterprises of the first-mentioned State are or may be  
17 subjected.

18                  6. The provisions of this Article shall, notwithstanding the  
19 provisions of Article 2, apply to taxes of every kind and description.

20                                   **ARTICLE 25 - MUTUAL AGREEMENT PROCEDURE**

21                  1. Where a person considers that the actions of one or both of the  
22 Contracting States result or will result for him in taxation not in accordance  
23 with the provisions of this Agreement, he may, irrespective of the remedies  
24 provided by the domestic law of those States, present his case to the taxation  
25 authority of the Contracting State of which he is a resident or, if his case  
26 comes under paragraph 1 of Article 24, to that of the Contracting State of  
27 which he is a national. The case must be presented within three years from  
28 the first notification of the action resulting in taxation not in accordance with  
29 the provisions of this Agreement.

30                  2. The competent authority shall endeavour, if the objection

1 appears to it to be justified and if it is not itself able to arrive at a satisfactory  
2 solution, to resolve the case by mutual agreement with the competent authority  
3 of the other Contracting State, with a view to the avoidance of taxation which is  
4 not in accordance with this Agreement. Any agreement reached shall be  
5 implemented notwithstanding any time limits in the domestic law of the  
6 Contracting States.

7 3. The competent authorities of the Contracting States shall  
8 endeavour to resolve by mutual agreement any difficulties or doubts arising as  
9 to the interpretation or application of this Agreement. They may also consult  
10 together for the elimination of double taxation in cases not provided for in this  
11 Agreement.

12 4. The competent authorities of the Contracting States may  
13 communicate with each other directly, including through a joint commission  
14 consisting of themselves or their representatives, for the purpose of reaching an  
15 agreement in the sense of the preceding paragraphs.

#### 16 ARTICLE 26 - EXCHANGE OF INFORMATION

17 1. The competent authorities of the Contracting States shall exchange  
18 such information as is foreseeably relevant for carrying out the provisions of  
19 this Agreement or to the administration or enforcement of the domestic laws  
20 concerning taxes of every kind and description imposed on behalf of the  
21 Contracting States, or of their political subdivisions or local authorities, insofar  
22 as the taxation thereunder is not contrary to this Agreement. The exchange of  
23 information is not restricted by Articles 1 and 2.

24 2. Any information received under paragraph 1 by a Contracting  
25 State shall be treated as secret in the same manner as information obtained  
26 under the domestic laws of that State and shall be disclosed only to persons or  
27 authorities (including courts and administrative bodies) concerned with the  
28 assessment or collection of, the enforcement or prosecution in respect of, or the  
29 determination of appeals in relation to, the taxes referred to in paragraph 1, or  
30 the oversight of the above. Such persons or authorities shall use the information

1 only for such purposes. They may disclose the information in public court  
2 proceedings or judicial decisions.

3 3. In no case shall the provisions of paragraphs 1 and 2 be  
4 construed so as to impose on a Contracting State the obligation:

5 (a) to carry out administrative measures at variance with the laws  
6 and administrative practice of that or of the other Contracting State;

7 (b) to supply information which is not obtainable under the laws or  
8 in the normal course of the administration of that or of the other Contracting  
9 State;

10 (c) to supply information which would disclose any trade,  
11 business, industrial, commercial or professional secret or trade process, or  
12 information, the disclosure of which would be contrary to public policy  
13 (order public).

14 4. If information is requested by a Contracting State in accordance  
15 with this Article, the other Contracting State shall use its information  
16 gathering measures to obtain the requested information, even though that  
17 other State may not need such information for its own tax purposes. The  
18 obligation contained in the preceding sentence is subject to the limitations of  
19 paragraph 3 but in no case shall such limitations be construed to permit a  
20 Contracting State to decline to supply information solely because it has no  
21 domestic interest in such information.

22 5. In no case shall the provisions of paragraph 3 be construed to  
23 permit a Contracting State to decline to supply information solely because  
24 the information is held by a bank, other financial institution, nominee or  
25 person acting in an agency or a fiduciary capacity or because it relates to  
26 ownership interests in a person.

#### 27 ARTICLE 27 - ASSISTANCE IN THE COLLECTION OF TAXES

28 1. The Contracting States shall lend assistance to each other in the  
29 collection of revenue claims.

30 This assistance is not restricted by Articles 1 and 2. The competent

1 authorities of the contracting States may by mutual agreement settle the mode  
2 of application of this Article.

3 2. The term “revenue claim” as used in this Article means an amount  
4 owed in respect of taxes of every kind and description imposed on behalf of the  
5 Contracting States, or of their political subdivisions or local authorities, insofar  
6 as the taxation thereunder is not contrary to this Agreement or any other  
7 instrument to which the Contracting States are parties, as well as interest,  
8 administrative penalties and costs of collection or conservancy related to such  
9 amount.

10 3. When a revenue claim of a Contracting State is enforceable under  
11 the laws of that State and is owed by a person who, at that time, cannot, under  
12 the laws of that State, prevent its collection, that revenue claim shall, at the  
13 request of the competent authority of that State, be accepted for purposes of  
14 collection by the competent authority of the other Contracting State. That  
15 revenue claim shall be collected by that other State in accordance with the  
16 provisions of its laws applicable to the enforcement and collection of its own  
17 taxes as if the revenue claim were a revenue claim of that other State.

18 4. When a revenue claim of a Contracting State is a claim in respect of  
19 which that State may, under its law, take measures of conservancy with a view  
20 to ensuring its collection, that revenue claim shall, at the request of the  
21 competent authority of that State, be accepted for purposes of taking measures  
22 of conservancy by the competent authority of the other Contracting State. That  
23 other State shall take measures of conservancy in respect of that revenue claim  
24 in accordance with the provisions of its laws as if the revenue claim were a  
25 revenue claim of that other State even if, at the time when such measures are  
26 applied, the revenue claim is not enforceable in the first-mentioned State or is  
27 owed by a person who has a right to prevent its collection.

28 5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue  
29 claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall  
30 not, in that State, be subject to the time limits or accorded any priority



1 applicable to a revenue claim under the laws of that State by reason of its  
2 nature as such. In addition, a revenue claim accepted by a Contracting State  
3 for the purposes of paragraph 3 or 4 shall not, in that State, have any priority  
4 applicable to that revenue claim under the laws of the other Contracting  
5 State.

6 6. Proceedings with respect to the existence, validity or the  
7 amount of a revenue claim of a Contracting State shall not be brought before  
8 the courts or administrative bodies of the other Contracting State.

9 7. Where, at any time after a request has been made by a  
10 Contracting State under paragraph 3 or 4 and before the other Contracting  
11 State has collected and remitted the relevant revenue claim to the first-  
12 mentioned State; the relevant revenue claim ceases to be:

13 (a) in the case of a request under paragraph 3, a revenue claim of the  
14 first-mentioned State that is enforceable under the laws of that State and is  
15 owed by a person who, at that time, cannot, under the laws of that State,  
16 prevent its collection or

17 (b) in the case of a request under paragraph 4, a revenue claim of  
18 the first-mentioned State in respect of which that State may, under its laws,  
19 take measures of conservancy with a view to ensuring its collection, the  
20 competent authority of the first-mentioned State shall promptly notify the  
21 competent authority of the other State of that fact and, at the option of the  
22 other State, the first-mentioned State shall either suspend or withdraw its  
23 request.

24 8. In no case shall the provisions of this Article be construed so as  
25 to impose on a Contracting State the obligation:

26 (a) to carry out administrative measures at variance with the laws  
27 and administrative practice of that or of the other Contracting State;

28 (b) to carry out measures which would be contrary to public policy  
29 (order public);

30 (c) to provide assistance if the other Contracting State has not

1 pursued all reasonable measures of collection or conservancy, as the case may  
2 be, available under its laws or administrative practice;

3 (d) to provide assistance in those cases where the administrative  
4 burden for that State is clearly disproportionate to the benefit to be derived by  
5 the other Contracting State.

6 ARTICLE 28 - MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

7 Nothing in this Agreement shall affect the fiscal privileges of members of  
8 diplomatic mission or consular posts under the general rules of international  
9 law or under the provisions of special agreements.

10 CHAPTER VI - FINAL PROVISIONS

11 ARTICLE 29 - ENTRY INTO FORCE

12 1. The Governments of the Contracting States shall notify each other  
13 that the constitutional requirements for the entry into force of this Agreement  
14 have been complied with.

15 2. This Agreement shall enter into force on the thirtieth day after the  
16 date of the later of the notifications referred to in paragraph 1 of this Article and  
17 its provisions shall have effect:

18 (a) in Nigeria:

19 (i) in respect of tax withheld at source on income and taxes on capital  
20 gains derived by a non-resident, in relation to income and capital gains derived  
21 on or after the first day of January of the year in which the Agreement enters  
22 into force;

23 (ii) in respect of other taxes, in relation to income of the period  
24 beginning on or after the first day of January of the year in which the  
25 Agreement enters into force;

26 (b) in South Korea:

27 (i) in respect of tax withheld at source from amounts paid or credited  
28 on or after the first day of January of the year in which the Agreement enters  
29 into force;

30 (ii) in respect of other taxes, for the taxable year beginning on or after

1 the first day of January of the year in which the Agreement enters into force.

2 ARTICLE 30 - TERMINATION

3 This Agreement shall remain in force until terminated by a Contracting  
4 State. Either Contracting State may terminate the Agreement, through  
5 diplomatic channels, by giving notice of termination at least six months  
6 before the end of any calendar year after the year in which this Agreement  
7 comes into force cease to have effect:

8 In such event, this Agreement shall:

9 (a) in Nigeria:

10 (i) in respect of withholding tax on income and taxes on capital  
11 gains derived by a non-resident on or after 1st January in the calendar year  
12 immediately following that in which the notice of termination is given; and

13 (ii) in respect of other taxes, in relation to income of any basis  
14 period beginning on or after 1st January in the calendar year immediately  
15 following that in which the notice of termination is given;

16 (b) in South Korea:

17 (1) in respect of tax withheld at source from amounts paid or  
18 credited to non-residents on or after the first day of January in the calendar  
19 year following that in which the notice is given; and

20 (ii) in respect of other taxes, for the taxable year beginning on or  
21 after the first day of January in the calendar year following that in which the  
22 notice is given, were incurred.

23 2. In respect of paragraphs 1 and 2 of Article 7, where an enterprise  
24 of a Contracting State sells goods or merchandise or carries on business,  
25 including the survey, supply, installation or construction of industrial,  
26 commercial or scientific equipment or premises, or of public works, En the  
27 other Contracting State through a permanent establishment situated therein,  
28 the profits of the permanent establishment should be determined on the basis  
29 of the income earned which is directly attributable to the actual business  
30 activity of the permanent establishment.

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

16           4. The provisions of this Agreement shall not apply if the right giving  
17 rise to the income or capital gains was created or assigned mainly for the  
18 purpose of taking advantage of this Agreement and not for bona fide  
19 commercial reasons. It is also understood that the benefits under this  
20 Agreement shall not be granted to a person that is not the beneficial owner of  
21 the items of income or capital gains derived from the other Contracting State.

#### EXPLANATORY MEMORANDUM

This Bill seeks to enable effect to be given in the Federal Republic of Nigeria to the agreement between the Federal Republic of Nigeria and Republic of South Korea for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and capital gains and other related matters.