



『技術導入 및 合作投資契約에 다른 實務上 問題點에 關하여』(完)

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.....<完稿될 目 次>.....

- 6. 合作投資契約의 事例
- 6.1. 特定土木工事入札을 위한 入札前合意書事例
- 6.2. 特定建設工事受注를 위한 技術提携總括契約書事例
- 6.3. 建設受注(馬來現地)合作投資契約事例
- 7. 맺는말
- 8. 參考文獻 및 資料

6. 合作投資契約의 事例

6.1. 特定土木工事入札을 위한 入札前合意書事例(PRE-BID AGREEMENT)

IT IS HEREBY MUTUALLY AGREED BETWEEN _____ ENGINEERING CO. LTD., A COMPANY INCORPORATED IN KOREA HAVING ITS REGISTERED OFFICE _____-DONG _____-KU, SEOUL ON THE ONE SIDE AND

OVERSEAS DECLOEDT ET FIS S.A., A COMPANY INCORPORATED IN BELGIUM AND HAVING ITS REGISTERED OFFICE 11 AVE FRANKLIN ROOSEVELT 1050 BRUSSELS ON THE OTHER SIDE

入札前合意書

本 合意書는 서울特別市 _____區 _____洞 _____에 住所를 둔 韓國에서 登記業體인 「○○建設會

社」와 白耳義國 BRUSSEL 市 AVE, FRANKLIN ROOSEVELT 1050에 住所를 둔 白耳義國의 登記業體인 OVERSEAS DECLOEDT ET FILS SA 사이에 相互合意된 事項을 文書化한다.

THAT BOTH PARTIES UNDERTAKE TO JOINTLY USE THEIR BEST ENDEAVOURS:

(1) TO SECURE THE RELEVANT AUTHORITIES' APPROVAL TO BE CONSIDERED AS A JOINT PARTRENSHIP FOR THE PERFORMANCE OF THE "ASAN BAY STEEL MILL NO 2" WORKS.

(2) TO LODGE A TENDER FOR THE PERFORMANCE OF THE WORKS OR NEGOTIATE THE CONTRACT.

(3) IF SUCCESFULL TO ENTER INTO A JOINT-VENTURE AGREEMENT IN ORDER TO PERFORM THE WORKS SPECIFICALLY RELATED TO ITS FIELD OF ACTIVITIES.

兩社는 最善의 努力에 의해 合同으로 業務推進하는데 다음 事項에 合意한다.

1) 牙山灣 第二製鐵工場事業 受注를 위해 한 合同業體로서 豫想되는 關係當局의 認可獲得

2) 事業受注上 必要한 入札書의 作成提出 或은 契約上의 相談

3) 萬一受注가 成功되어 各其 關聯된 專門分野의 業務를 執行하는데 있어서 本事業遂行上 “合

* 土木技術士(港灣 및 海岸)

作施工合意書”作成을 別途로 作成하기로 한다.

IT IS UNDERSTOOD THAT THIS AGREEMENT REPRESENTS A COMMITMENT OF EXCLUSIVITY BETWEEN BOTH PARTIES.

IT IS HOWEVER AGREED THAT THE POSSIBLE ADDITION OF OTHER PARTIES IN THE INTEREST OF THE JOINT-VENTURE IS NOT PRECLUDED, BUT ONLY POSSIBLE WITH THE PRIOR CONSENT OF BOTH PARTIES HERETO.

THIS PRE-BID AGREEMENT IS SOLELY INTENDED FOR THE “ASAN BAY STEEL MILL NO 2 PROJECT” (HEREIN CALLED THE “WORKS”).

本合意書는 兩社 相互間에 있어서 獨占言約 임을 銘記한다. 然而 즉 J.V. 施工에 興味를 갖게 되는 第三者가 參與하는 可能性을 排除하지 않는데 合意하나, 이것은 雙方의 事前同意를 얻어야만 可能한 것이다.

入札前 合意書는 單只 _____ 第二製鐵工場 建設工事(이후 “工事”이라 함)에만 適用된다.

THE FORMAL JOINT-VENTURE AGREEMENT OUTLINING IN DETAIL THE RESPECTIVE RIGHTS AND RESPONSIBILITIES OF THE PARTIES WILL BE DRAFTED AND ANNEXED TO THIS DOCUMENT AS SOON AS ADDITIONAL INFORMATION IN REGARD TO THE SCOPE OF THE WORKS WILL BE MADE AVAILABLE.

OVERSEAS DECLOEDT ET FILS

GENERAL MANAGER OVERSEAS DEPARTMENT

_____ ENGINEERING CO LTD

CHIEF EXECUTIVE PRESIDENT

本合意書에 添加하여 工事範圍와 細部事項이 確定되는 데로 別添書類는 兩社 實務者의 責任 限界와 關聯된 權限下에 細部事項을 要約하는 正式 “合作施工合意書”를 作成키로 한다.

OVERSEAS DECLOEDT ET FILS S.A.

GENERAL MANAGER OVERSEAS DEPT.

CONSTRUCTION CO, LTD

CHIEF EXECUTIVE PRESIDENT

6.2. 特定建設工事受注를 위한 技術提携總括 契約書事例

GENERAL COOPERATION AGREEMENT

between:

SOCIETE DE TRACTION ET D'ELECTRICITE S.A. 31, rue de la Science, 1040 Bruxelles, Belgium

and

A.B.C. COMPANY LIMITED, _____ Seoul, Korea collectively called hereafter “The Parties”.

技術提携總括契約書(GENERAL COOPERATION AGREEMENT) 白耳義國 BRUSSELLES 市 1040 Rue de la Sciene 31 番地所在 SOCIFTE DE TRACTION ET D'ELECTRICITE S.A. 社와 大韓民國 서울特別市 _____區 _____洞 _____番地 所在, ABC 株式會社는 이 契約上 “當事者” 라고 相互 稱한다.

In due consideration of

—the outstanding performances of A.B.C. company in the field of civil works and related engineering, well-known to Société de Traction et d'Electricité

—the capabilities of A.B.C. Engineering Company, well-known to Société de Traction et d'Electricité

—the long history and the great list of references of Société de Traction et d'Electricité in all fields of engineering all over the world, well-known to A.B.C. company Ltd.

the Parties hereto agree as follows:

—著名한 TRACTIONEL 社(Societe de Traction

et D'Electricite S.A.의 略稱)의 關聯된 技術 提携와 各種土木 工事施工分野에 있어서 ABC 建設會社의 빛나는 工事實績의 바탕과, —著名한 TRACTIONAL 社(의 技術提携)와 A. B.C. 엔지니어링(株)의 能力提携와, —全世界에 걸쳐서 ENGINEERING 全部門에 亘하여 TRACTIONEL 社의 長期間에 이룬 기록한 實績能力保有와 著名한 ABC 建設會社와 ABC 엔지니어링(株) 등과 다음과 같은 關聯業務推進黨을 위해, 當事者相互間에 協約을 맺는다.

1. PURPOSE

The purpose of this Agreement is to define the framework within which the Parties will collaborate to promote and implement the consulting and engineering activities of both parties, such as: hydro-electric and fossil/fuel power plants, gas and oil distribution, and infrastructure projects etc, localized in the Republic of Korea.

1. 事業目的

本契約의 目的은 韓國內에서 水力發電, 化石과 燃料에 의한 火力發電所, 개스와 送油管路網과 工作構造物事業과 같은 業務에 있어서 兩當事者間에 諮問과 엔지니어링業務의 受注促進을 施行함에 있어서 相互協力하는 基本原則을 定義하는 데 있다.

2. FORM OF COOPERATION

The present Agreement of cooperation has exclusive character. Each party commits itself to inform the other party about the projects it envisages to follow within the field of activity defined here above.

If, for a particular project, both parties agree to submit a joint offer, then they shall cooperate for that project and a detailed joint venture agreement between the Parties shall be signed to determine the conditions of execution of the work (apportionment of work, apportionment of payments, methods of pay-

ments, sharing of responsibilities, etc.)

2. 協力の 形態

現契約上의 協力形態는 獨占的인 性格으로 한다. 兩當事者는 前項에서 規定지은 活動部門範圍內에서 受注上의 事業情報를 서로 通報하기로 한다.

萬一, 特定事業에 關하여 兩當事者는 合同見積書를 提出하는데 同意하고나서 該當事業은 共同推進黨하는데 있어서, 別途로 兩當事者는 詳細한 合作業務契約書를 作成하여 業務遂行(工程의 分別, 支拂方法의 分割要領, 支拂方法, 責任의 限界等) 上의 各條項을 決定짓는 書類에 署名하기로 한다.

3. COSTS INCURRED PRIOR TO CONTRACT AWARD

Each party shall bear the costs incurred by it in connection with the promotion and negotiation with the customer. However, the cost of international air passages in connection with the preparation of a proposal and ensuing negotiation with the customer shall be shared between the Parties in proportion to their share of work in the proposed project.

3. 契約締結以前에 發生한 諸經費

各 當事者는 發注處와의 受注促進上 所要된 經費는 各者, 負擔이다. 그러나, 豫想되는 事業의 分擔比例에 따라서 入札提案書의 作成에 關聯된 國際航空費用이나 發注處와의 受注活動上 所要된 經費는 各 當事者間에 配當된다.

4. LANGUAGE

All correspondence and dealings between the Parties shall be made in English.

4. 使用言語

各 當事者間의 모든 通信文書나 去來書類等은 英語로 取扱된다.

5. VALIDITY OF THE AGREEMENT

This Agreement is valid until December 31st, 1981.

This Agreement can be extended by comm-

on written agreement.

5. 契約의 有効期間

이 契約書는 1981年 12月 31日限 有効하다.
이 契約書는 普通文書合意로 延長될 수 있다.

6. SETTLEMENT OF DISPUTES

All disputes arising in connection with the present Agreement shall be finally settled under the rules of conciliation and arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the rules.

The applicable law regarding the matter under dispute shall be the Swiss code of obligations.

The arbitration shall be conducted in Geneva, in the English language.

SOCIETE DE TRACTION ET D'ELECTRICITE S.A.

Managing Director. President
ABC COMPANY LIMITED

HONG KIL DUNG
president

6. 紛爭解決

現契約書와 關聯되어 惹起되는 모든 紛爭은 國際商工會議所의 和解와 仲裁規定下에 따르는 指名된 一人或은 그 以上の 仲裁者에 依하여 最終的으로 解決된다.

紛爭事項에 適用되는 準據法은 瑞西國의 紛爭條項에 따른다.

仲裁는 瑞典國 Geneva에서 英語로 執行된다.

SOCIETE DE TRACTION ET D'ELECTRICITE S.A.(會社)

Managing Director. President

ABC Company Ltd.,

洪吉童
社長

6.3. 建設受注(馬來現地)合作投資契約事例

AN AGREEMENT made this ____ day of _____, 1977 Between TRENGGANU STATE ECONOMIC DEVELOPMENT CORPORATION, a statutory body established under the Trengganu State Economic Development Corporation Enactment 1965 and having its office at Tingkat 2, Wisma Maju, Jalan Laya, Bunga Kuala Trengganu, Trengganu, Malaysia (hereinafter called "the SEDC") of the one part and KANG NAM DEA SAN CO. LTD., a company incorporated in the Republic of Korea and having its head office at 250-9, Shindang Dong, Jung Ku, Seoul, Korea (hereinafter referred to as "the KNDC") of the other part.

WHEREAS the parties here to had agreed to form a company (hereinafter referred to as "the joint company") for the purpose of carrying on the business of road builders and contractors.

馬來國 Trengganu 州 Kuala Trengganu. Bunga, Jalan Daya. Wisma Maju Tingkat 2番地所在, TRENGGANU STATE ECONOMIC DEVELOPMENT CORPORATION(以下 SEDC라 稱함)은 Trengganu 州 經濟開發公社法施行令(1965年判定)에 依據 設立된 法人體이며 韓國 서울特別市 中區 新堂洞 250番地 9號 所在 강남대산株式會社(以下 KNDC라 稱함)은 韓國에서 設立된 會社로서 雙方이 1977年 __月 __日 合意함.

(馬來國內) 道路建設을(主로하는) 建設都給業을 遂行키 위하여 (以下, 合資會社로 稱함) 會社를 設立하는데 雙方이 合意함.

NOW THEREFORE IT IS HEREBY AGREED as follows:-

1. FORMATION AND CAPITAL

The parties hereto shall forthwith procure the incorporation of the joint company as a company limited by shares under the Companies Act, 1965 and having an authorised share capital of

Malaysian Ringgit One Million(M\$ 1,000,000.00) divided into One Million(1,000,000) ordinary shares of Malaysian Ringgit One(M\$ 1.00) eac.

그리하여, 合意事項은 如下하다.

1. 資本金과 株券發行限度

1965年 施行된 會社法에 依據하여 有限會社로 合作會社를 設立하고 그 株券의 額面은 一株當 馬來貨壹弗로 百萬株發行키로 하여 授權資本金은 百萬馬來弗로 한다.

2. NAME

The joint company shall be called “_____” if such name is available for registration or by such other available name as may be agreed between parties hereto.

2. 會社名稱

登記 가능한 것이거나 또는 雙方이 서로 合意하게 될 수 있는 其他名稱으로 _____ 合作會社라 稱한다.

3. MEMORANDUM AND ARTICLES OF ASSOCIATION

3.1. The Memorandum and Articles of Association of the joint company shall be in the form as the parties hereto may agree in writing.

3. 會社의 定款과 合意覺書

3.1. 合資會社組織上의 定款과 合意覺書는 雙方合意下에 書面化한다.

3.2. The Memorandum and Articles of Association shall be subscribed by one person nominated by the SEDC and one person nominated by KNDC and each such subscriber shall agree in such Memorandum to take up one ordinary share of Malaysian Ringgit(\$ M1.00) in the capital of the joint company.

3.2. SEDC가 指名한 當事者(一人)과 KNDC側이 指名한 當事者(一人)間에 會社定款과 合意覺書에 署名하고, 各署名者는 合作會社資本金構

成上의 原株券 馬來\$貨(Ringgit M\$1.00) 額面行使에 合意한다.

3.3. In the event of any conflict between the provisions of this Agreement and the provisions of the Memorandum and Articles of Association the provisions of this Agreement shall prevail.

3.3. 이 合意書上의 各條項과 會社定款의 各條項上의 爭點이 發生할 경우 이 合意書의 各條項은 定款에 앞선다.

4. SHARE CAPITAL AND SUBSCRIPTION

4.1. The issued share capital of the joint company shall be Malaysian Ringgit (M\$) and shall be subscribed by the parties hereto in the following proportion:-

The SEDC	60%
The KNDC	40%

4. 株券發行

4.1. 合資會社의 發行된 株券資本金은 馬來貨 Ringgit _____ (M\$ _____)로서 다음과 같이 分配할 것은 雙方이 合意한다.

SEDC 社側	60%
KNDC 社側	40%

4.2. Within one month from the date of the incorporation of the joint company each of the parties hereto shall make an unconditional application in writing to the joint company for the allotment to it for cash at par of the number of ordinary shares in the joint company determined pursuant to Clause 4.1. herein upon terms that such shares shall be payable as and when calls are made and each party shall not withdraw the application so made.

4.2. 合資會社發足後 一個月以內 雙方은 前項 4.1.條에서 定한 合資會社配分比에 따르는 原株券現札拂入에 있어서 當會社에 無條件書面提出로서 該當條件에 充足하도록 現金拂入하여야 하며, 一當書面提出된 以上 返戻은 不許한다.

4.3. Upon all calls on the shares having been paid in full the parties hereto agree that they shall exercise their voting rights in the joint company and take such other steps as for the time being lie within their power to procure that the joint company shall not increase its authorised or issued capital without the written consent of both parties hereto. In the event of the parties hereto agreeing to any increase of the issued capital of the joint company the issue of shares pursuant to such increase shall be allotted to the parties hereto in the proportion as is mentioned in Sub-clause 4.1. herein or in such other proportion as the parties hereto may agree.

4.3. 合資會社의 投票權行使나 權限이 行使되는 他段階의 業務는 雙方이 書面同意없이 授權或은 拂込資本金增額不認定等에 全額拂込株券權限에만 同意한다. 合資會社의 拂込資本金의 어떤 增額同意가 생겼을 경우 雙方은 4.1.條에 明示된 株券發行比率에 따르거나 或은 雙方이 合意되는 다른 比率로 配當하는데 同意한다.

5. DIRECTORS

5.1. The first directors of the joint company shall be those named as such in the Memorandum and Articles of Association of the joint company.

5. 理事陣

5.1. 合資會社의 定款 및 覺書에서 定한데 따라 첫째 理事가 指名된다.

5.2. Subject to Clause 5.4. the joint company shall have five (5) directors of whom the SEDC shall be entitled to nominate three (3) directors and KNDC shall be entitled to nominate two (2) directors. Each party shall be entitled to determine the period its respective nominees will hold office, and at any time to remove anyone or more of such nominees and appoint another or others in place thereof. Any such appointment, determination and re-

moval shall be made by notice in writing signed by or on behalf of the party making the same and sent to the Secretary of the joint company and shall take effect from time of receipt. Each party shall also be entitled to nominate an alternate director for each of its nominees.

5.2. 合資會社의 理事陣構成은 5.4.條에 따라 SEDC 側에서 3人, KNDC 側에서 2人을 各其指名하여 總 5人의 理事로 한다. 株主各側은 各其 關聯者를 該當期間 勤務케 하며, 理事陣의 交替는 隨時 어느者에게 任命할 수 있다. 如斯한 理事의 任命, 交替等은 合資會社의 秘書에게 署名捺印된 書面通知로서 成立되며 그 効力은 書面通知 接受와 同時에 發効케 된다. 株主各側은 또 各其 指名推薦된 交替理事를 任命케 한다.

5.3. Each of the parties hereto shall exercise its voting rights for the time being in the joint company and take such other steps as lie within its power to give full force and effect to the provisions of this Agreement; and

(i) to prevent the passing of any resolution for the removal from office as a director of the joint company of any person nominated to such office by the other of them;

(ii) to procure that the Chairman of the Board of Directors of the joint company be appointed from amongst the nominees of the SEDC;

(iii) to procure that the Managing Director of the joint company be appointed from amongst the nominees of the KNDC during the period of five (5) years from the date of incorporation of the joint company and thereafter to be appointed from amongst the nominees of the SEDC;

(iv) to procure that the number of directors of the joint company shall not be increased or decreased without the consent of the parties hereto.

5.3. 雙方은 合資會社의 投票權行使나, 其他 附與된 全權行使 및 이 合意書의 各 條項効力發揮을 다음과 같이 行事한다.

(i) 合資會社의 한 任員으로서 各株主에 依해 任命된 어떤 者라도 解任決議通過를 抑制한다.

(ii) 理事會長은 SEDC 側 任員中에서 指名케 한다.

(iii) 合資會社의 (主)管理理事(理事長格)은 KNDC 側 任員中에서 指命하되 會社發足後 5年 間만 하고, 向後는 SEDC 側 任員中에서 指名되도록 한다.

(iv) 合資會社의 任員數는 雙方合意없이는 增減케 할 수 없다.

5.4. The number of directors of the joint company which each party shall be entitled to nominate shall be varied in the event of changes in the share holdings of the parties hereto in the joint company so as to reflect the proportion of their respective share holdings in the joint company.

5.4. 合資會社의 雙方任員數는 配當된 株券分配比率에 反映되도록 株券量變化에 따라 調整될 수 있다.

5.5. The quorum necessary for the transaction of business of the directors shall be three (3) and shall include at least one (1) nominee each from the SEDC and the KNDC.

5.5. 理事의 實務取扱 業務上의 定數는 3人으로 하되, 最小 1人式 SEDC 側과 KNDC 側에서 끼도록 한다.

6. TRANSFER OF SHARES AND PRE-EMPTION

6.1. The SEDC shall be entitled to transfer the whole or any part of its shares in the joint company to any person or persons, companies or to any other government agency or agencies or corporations subject, however, to the prior consent of the KNDC, such consent not to be unreasonably withheld.

6. 株券의 讓渡와 先買權

6.1. SEDC 側은 合資會社의 株券의 全部, 한 部分의 讓渡에는 個人, 會社, 法人, 如何한 政府代行機關, 公共團體等 KNDC 側 同意로 하되, 非合理的으로 되지 않게 하기 위하여 同意權은 留保된다.

6.2. The KNDC shall not sell transfer or otherwise part with the beneficial ownership of any of its shares in the joint company without first making an offer in writing to sell the same to the SEDC.

6.2. KNDC 側은 SEDC 側에 一次로 書面提議함이 없이 合資會社의 株券販賣讓渡나 或은 受益者所有權形式等の 其他讓渡는 해서는 안된다.

6.3. Every such offer of sale shall remain open for acceptance for a period of forty five (45) days from the date thereof.

6.3. 株券의 讓渡販賣에는 提議된 날로부터 45 日間內에는 販賣申込提議를 受諾할 期間을 두는 것으로 한다.

6.4. If before the expiry of such period the offered shall accept the offer, the offer or shall and the offered shall purchase the shares comprised in the offer free from encumbrances at the price offered such sale and purchase to be completed at the registered office of the joint company upon the expiry of seven (7) days following such acceptance.

6.4. 株券讓受提議者가 上記期間內에 그 申込이 成立되면은 株券販賣者는 一旦, 販賣하되 株券願買者는 申込된 株價도 購入하되 抵當權設定 같은 物權이 全然없는 株券을 買入하게 되며, 讓受決定日로부터 7日以內에 合資會社의 (指定)登記所에서 購買行爲上의 法定登記를 完了하여야 한다.

6.5. If any such offer shall refused or be lapse by effluxion of time the offerer shall be at liberty during the period of thirty (30) days

next following such refusal or lapse (as the case may be) to sell to any other person or persons approved by the SEDC the shares comprised in the offer at the price which exceeds or equals the price offered; Provided that in such case the offeror shall prior to the completion of such sale deliver to the joint company a written undertaking from the prospective transferee to be bound by the provisions of this clause and by such other provisions of this Agreement as the Directors may require as if it were a party hereto.

6.5. 萬一 株券讓受 提議가 拒絕되거나 (株券 販賣)期日滿了로 (申込權이) 消滅하게 되면은 願 買株價가 原株價와 同等以上價로 된 株券은 SE-DC 側이 承諾한 어떠한 他人(一人或은 그 以上) 에게 販賣키 위해 (豫想되는 事例로서) 株券願 買者는 어떤 拒絕이나 期日滿了 翌日부터 30日 間은 自由로히 取得할 수 있다. 그리고, 如斯한 境遇에 販賣者는 讓受希望者로부터 書面保證을 會社側에 提示하여 販賣節次의 完決에 앞서서, 理事陣이 一體團合하여 要求하게 될때 이 條項 의 該當事項이나, 또는 이 合意書의 其他關聯條 項에 制約을 받게될 수도 있을 것이다.

6.6. The certificate representing shares in the joint company shall bear the following endorsement;

"Transferability of shares represented by this Certificate is restricted in accordance with the terms and provisions of the Agreement dated the day of , 197 and made between the TRENGGANU STATE ECONOMIC DEVELOPMENT CORPORATION and KANG NAM DAE SAN CO. LTD. a copy of which is available for inspection at the registered office of the company".

6.6. 合作會社의 株券證書에는 다음 事項을 背景토록 한다.

即, "이 證書로 明示된 株券의 讓渡權은 TR-ENGGANU STATE ECONOMIC DEVELOPMENT CORPORATION(SEPC)과 尙남대산株

式會社(KNDC) 사이에 197_年 某月某日에 締結된 合作契約書의 各條項에 따라 制約을 받는다. 當 會社의 (指定) 登記所에 寫本을 備置케 하여 監査에 利用토록 한다.

7. KNDC'S COVENANT

The KNDC covenants that so long as its owns beneficially shares in the capital of the joint company it shall not enter into any partnership or any arrangement for sharing profits or any other form of joint-venture with any other person, company public corporation or government agency for the purpose of carrying on any business in Malaysia.

7. KNDC 側의 約定

馬來國에서 收益上의 어떤 事業形態나 類似한 措置 같은 것이나, 或은 他人, 法人體나 公共政府 代行機關과 事業去來上의 目的으로 (第三者와) 合作會社形態로는 當社와의 資本參與形態로 있는 限, 事業에 參與할 수 없다는 것을 KNDC 側은 約定한다.

8. OPTION OF SEDC

8.1. After the expiry of seven (7) years from the date of incorporation of the joint company the SEDC shall have the option to purchase all the shares in the joint company beneficially owned by the KNDC.

8. SEDC 側의 選擇權(옵션)

8.1. 合作會社設立後, 7年 經過後에는 SEDC 側은 KNDC 側이 所有한 當社의 모든 株를 購入할 수 있는 選擇權을 保有한다.

8.2. The sale price shall be the value as certified by the auditors for the time being of the joint company as being the fair value for the shares having regard to the fact that the shares in question represent a minority holding.

8.2. 株券(讓渡)價는 當會社로서 代表的인 少數株主에 問題거리인 株券 일지라도 正當한 株價를 維持함과 같이 當分間 監査가 保證하는 株價로 한다.

9. COMPANY'S POLICY

9.1. It is to be the policy of the joint company to build up a strong executive management team and personnel structure as early as possible to carry out the joint company's operations. However non-Malaysian personnel shall not be recruited by the joint company without the prior written consent of the SEDC.

9. 會社政策(方針)

9.1. 當會社의 人事管理는 그 實務者가 公正하고 強力하도록 施策되며, 會社運營은 系統的인 人事管理에 依해 構成된 人脈으로 施行된다. 그러나, 非馬來人의 當社就業은 SEDC 側의 事前 同意없이는 안된다.

9.2. It is to be the policy of the joint company that so far as may be practicable the joint company will finance any expansion of its business from and repay loans obtained by it out of retained profits and depreciations provisions and until no further expansion of the joint company's business is required and such loans have been repaid it will not declare any dividend on its ordinary shares. Each of the parties hereto shall exercise its voting rights in the joint company and take such other steps as lie within its power to procure the attainment of this policy.

9.2. 當會社의 施策으로는 健全實用方針으로서 積立收益金이나, 償還準備金에서 어떤 事業擴張을 하거나, 信用借入金의 返濟를 하기도 하고 또, 原株券에 對한 配當金支拂公告도 하지 않고 어떤 借入金의 返濟가 끝날때까지, 어떠한 事業擴張도 하지 않기로 한다.

兩當事者의 어느 側이나 이에 對하여 會社側에 投票權을 行使할 수 있고 또 이 施策範圍에서 할 수 있는 權限行使는 順序를 밝아서 段階的으로 할 수 있다.

9.3. The business and affairs of the joint company shall be carried out in a sound and business like manner for the purpose of building a successful, commercially strong and profitably corporation so as to bring to its share holders the maximum benefit obtainable from carrying out the joint company's operations provided that in so carrying out its operations and affairs the joint company shall comply with all relevant Federal and State Government policies.

9.3. 當會社의 事業全般은 健實하고, 成功的으로 事業目的을 達成하며 또 強力하게 推進하여 收益增大를 企圖하여 當社의 事業이 馬來國 聯邦 및 州政府施策에 會致되는 運營으로서 各株主에게 最大의 收益을 招來하도록 積極的인 事業運營施策이어야 할 것이다.

9.4. All purchases of machinery equipment plant and vehicles by the joint company shall be by open tenders.

9.4. 當會社에 所要되는 建設工用裝備나 車輛類는 一切, 公開入札로 購買한다.

9.5. No votes of the Board of Directors shall be valid except upon the affirmative vote of all the directors of the joint company present as a board meeting and constituting a quorum upon the following matters:—

9.5. 當會社의 모든 理事가 贊票를 任員會議에서 던지고 또 다음(五)個事項에 對해 法定人員數로 構成된 경우를 除外하고는 各 任員陣의 投票가 効力이 없다.

9.5.1 The lending of any monies to or suffering the indebtedness by any company firm person or persons whatsoever otherwise than in the ordinary course of the Company's business or its administration.

9.5.2. The borrowing of any monies whether upon the security of the whole or part of the Company's assets or not otherwise than in the ordinary course of the Company's business.

9.5.3. The consolidation, merger, or amalgamation or the engagement in a partnership

9.5.3. The consolidation, merger, or amalgamation or the engagement in a partnership

or joint venture of the joint company with any other company firm person or persons.

9.5.4. Any alteration to on amendment to the Memorandum and articles of Association of the joint company.

9.5.5. The sale transfer conveyance charge mortgage issue licence exchange or other disposition or the acquisition by purchase lease licence of any immoveable property of the joint company.

9.5.1. 會社運營上の 正當한 길을 離脫하여 어떤 會社의 人員 或은 個人으로부터 金錢의 貸付를 받거나, 또는 負債로 因한 損害를 끼치는 일.

9.5.2. 會社運營上の 正當한 길을 離脫하여, 會社資產의 全部 或은 一部를 擔保로 하거나 或은 別途措置로서 어떤 金錢이라도 借入하는 일.

9.5.3. 會社不動產의 整理處分, 企業合同 或은 吸收合併이나, 事業參與로 因한 負債發生이나, 當合作會社가 他會社人員 或은 個人과의(새로운) 合作을 企劃하는 것과 같은 일.

9.5.4. 當合作會社의 定款이나 合意覺書의 어떤 改定이나 修正하는 일.

9.5.5. 當合作會社의 販賣, 讓渡, 讓渡手苦料, 抵當權發行, 라이선스交換이나, 或은 其他處分, 或은 購買品이나, 라이선스貸與에 因한 手苦料의 取得, 其他 方途로서 不動產의 處分같은 일 等이다.

10. DIRECTOR'S REMUNERATION

The remuneration of the directors, if any, shall, from time to time be determined by the joint company at its Annual General Meeting. The directors shall be paid such travelling hotel and miscellaneous expenses as may reasonably be incurred in connection with their attendance at Board Meetings such expenses to be determined by the Board of Directors. If by decision of a Board Meeting having a constituted quorum a director is appointed with a temporary special assignment, a special remuneration approved by the Board of Directors may be granted to him.

10. 任員陣의 報酬

各 任員의 報酬는 年例行事上の 會社에서 當會社가 其時마다 決定되거나 別途措置로 決定한다. 各 任員에게는 出張旅費 또 任員會議參席에 關聯되어 發生하는 合理的인 附帶雜費같은 것도 任員會에서 決定될 經費로 支拂된다. 任員會議의 決定事項이 法定充足數에서 決定된 것이면 한 任員이 暫的 特別 措置로 任命될 때 任員會議에서 決議된 特別報酬를 그에게 供與할 수 있다.

11. EXPENSES

The joint company shall bear all expenses for its incorporation and all other pre-operational expenses.

11. 經 費

當合作會社의 法人創業費 一切을 會社가 負擔한다.

12. MUTUAL TRUSTS

In entering into this Agreement the parties hereto recognise that it is impracticable to make provisions for every contingency that may arise in the course of performance thereof and accordingly the parties hereto hereby declare it to be the intention of this Agreement that the Agreement shall operate amongst them with fairness and without detriment to the interest of any of them and if in the course of performance of the Agreement unfairness to any party is disclosed or anticipated then the parties hereto shall use their best endeavour to agree upon such action as may be necessary and equitable to remove the cause or causes of the same.

12. 相互信用

兩當事者는 이 契約書에서 서로 認定하기를 事業遂行上 發生할 어떤 偶發事項에 關한 事前準備 같은 非現實的인 것이다. 또 隨伴되는 일도 兩當事者가 茲에 이 契約書가 企圖하는 것은 契約書가 相互間에 正當성과 利益上的 無害를 招來할 것이라는 事實을 明白히 밝히고 또 어느 한 當事者가 事業遂行上 萬一 이 契約書와의 不

條理를 저질러서 公開하게 되거나 或은 豫想될 때에는 必要時 서로 協力一致해서 最善의 努力은 傾注하는데 合意하여 같은 立場에서 그 原因 究明과 打開에 힘쓰기로 한다.

13. SOLE CONTRACT

This Agreement constitutes the only Agreement between the parties hereto and supercedes all other agreements, expressed or implied between the parties.

13. 唯一契約

이 契約書는 兩當事者間에만 이루어진 것이고 또 모든 其他契約書, 兩當事者間의 言語上의 表現 或은 여기에 適觸되는 事項을 內包해서 모든 것은 優先한다.

14. GOVERNMENT POLICY

The effect of this Agreement shall be subject to the approval of the relevant Government Authority and the provisions therein shall be in line with Government policies, regulations and directives.

14. 政府承認

이 契約書는 關聯當事者政府의 認可와 政府의 施策, 法規와 方針에 合致되는 事項에 따라서 效力이 있다.

15. DISPUTES

If any dispute or difference shall arise between the parties hereto touching any clause matter or thing whatsoever herein contained or the operation or construction thereof or any matter or thing anywhere connected with this Agreement or the rights duties or the liabilities of any party hereunder; then and in every case the dispute or difference shall be referred to a single arbitrator in case the parties hereto agree upon one (1) or otherwise to two (2) arbitrators one (1) to be appointed by each party and in either case in accordance with and subject to the provisions of the Arbitration Act, 1952 and any statutory modification

or re-enactment thereof for the time being in force,

15. 紛爭

兩當事者間의 紛爭이나 意見差異가 이 契約書 속에 內包된 어느 句節에서 發生하거나 或은 運營上 또는 工事施工上, 或은 이 契約書에 關聯된 어떤 事項이 어느 곳에서나 또는 어느 한쪽 當事者의 權利義務나 債務上에서 發生할 時, 모든 紛爭이나 意見差異는 어느 때나 여기서 合議된 경우 한 單一 仲裁者에게 仲裁를 받게 하되, 또는 二人으로 할 수 있고 이때에는 이中 一人은 兩當事者가 指名하는 者라야하며, 不然일 경우, 1952年 制定된 仲裁法의 各條項에 따르게 하되 그 法令의 어떤 改廢 및 補完이 其時이루어진 경우에도 該當된다.

16. NOTICE

Any notice required to be served under this Agreement by any of the parties hereto shall be sufficiently served if delivered or sent by registered post to the other party at the address of such other party herein before given and any notice so sent by registered post shall be deemed to have been served at the time when in the ordinary course of post it would have been delivered.

16. 通知

이 契約書에 따라 所要될 어떤 通知라도 兩當事者는 여기서 提供된 相互間의 住所로 登記郵便物로 送達되었는가를 틀림없이 일해야하며 또 登記郵便物로 送達이 된 通知書는 其時마다 正當적으로 配達이 되었을 때에 이 通知가 이루어진 것으로 본다.

17. SUCCESSORS

This Agreement shall be binding upon the successors in title of the parties hereto.

17. 繼承權

이 契約書는 兩當事者로서의 呼稱을 가진 者만이 繼承權이 制約된다.

18. LAWS APPLICABLE

This Agreement shall be governed by (subject to) the Laws of Malaysia.

18. 準據法

이 契約書는 馬來國法에 依해 統轄한(따른)다.

19. AS WITNESSTHEREOF

the parties hereto have hereunto set their hands and seals the day and year first above written.

THE COMMON SEAL of TRENGGANU STATE ECONOMIC DEVELOPMENT CORPORATION is affixed hereto in the presence of:)

THE COMMON SEAL of KANG NAM DAE SAN CO. LTD is affixed hereto in the presence of:)

19. 末 文

兩當事者는 以上の 立證으로서 茲에 첫머리에 記載한 年月日의 本契約書를 署名(捺印)한다.

(某氏) 立會下에 TRENGGANU STATE ECONOMIC DEVELOPMENT CORPORATION 은 蠟印을 添付한다:)

(某氏) 立會下에 강남대산株式會社는 蠟印을 添付한다:)

7. 맺는말

事例를 여러가지 列舉하려고 하였으나, 事業上 理由와 紙面關係로 一部에 그쳤고, 또 解說 같은 것은 거의 省略되어 있다는 것은 讀者諸賢 께서는 諒解하여 주시기를 바라며 이곳에 添付 되는 參考文獻目錄은 筆者가 過去十餘年間 이 業務를 體驗하면서 蒐集한 것을 一部紹介하는 바 입니다.

拙文이 되어 大端히 罪悚하나, 앞으로 海外建設 工事와 技術導入 및 合作投資契約과 關聯된 仲裁事例 같은 것을 抄譯할 機會를 再次 努力하

여 發表할 作定에 있습니다.)1981. 1. 27. 完稿)

8. 參考文獻 目錄

8. A. 韓 國

- A. 1) 「海外進출을 위한 合作投資要領」(中東地域進출을 中心으로) 1977. 8. 4. 國際經濟研究院刊
- A. 2) 「英文비즈니스契約書實例總覽」(韓英對照版)(750面) (原冊名: SAUL GORDONS MODERN ANNOTATED FORMS OF AGREEMENT) 發行處, 實用英語研究會(吳昌根) ※ 日語版有함.
- A. 3) 「中東諸國의 慣行 法規集」(538面) 國際問題調查研究所 1978年 7月刊
- ※ 사우디·이란·쿠웨이트·國等の 外國人投資法制, 會社法制, 商社代理店法制, 公共入札法制, 輸出入法制, 商行爲法制, 保險法制, 勞動法制, 租稅法制, 等 收錄되어 있음.
- A. 4) 「플랜트輸出實務」(668面) —輸出實務篇— KOTRA 1978年 4月刊 (輸出支援制度, 海外市場動向, 關係用語解說)
- A. 5) 「國際標準契約書式」 (英文)金岫根編 黑字經營研究所 1978年 10月 16日刊
- A. 6) 「플랜트輸出實務便覽」 黑字經營研究所 1980年 6月刊
- A. 7) 「ENGINEERING 産業(技術用役)과 PLANT 輸出 PLANT ENGINEERING」 韓國技術用役協會 1980年 4月刊
- A. 8) 「사우디아라비아 事業關係法規案內書(調查便覽, 英文)」 韓國海外建設協會 1980年 5月刊

8. B. 日 本

- B. 1) 「海外工事契約の手引き」(229面) 山木崇史編著 日刊工業新聞社 1971年 8月發刊, ※ FIDIC 標準約款(建設部門) 있음.
- B. 2) 「海外建設工事契約仕様」 日本土木學會編譯 1974年 10月發刊(551面) ※ 原著인 “ENGINEERING CONTRACTS AND SPECIFICATIONS” BY ROLENT W. ABETT 의 것을 翻譯한 것임.
- B. 3) 「海外エンジニアリングコントラクトマニュアル —契約と仕様書」(650面) —和英對照·契約書·仕様書文例附— 海外技術資料研究所 1977年 10月發刊
- B. 4) 「プラント建設見積マニュアル」(530面) 海外技術資料研究所 1977年 9月 30日發刊
- B. 5) 「技術プラント·機器輸出入のための英文技術資

料作成マニュアル」(480面, 一完全英和対照一)海外
技術資料研究所 発刊

- B. 6) 「製造業の海外進出・海外建設工事・プラント輸出のための海外進出企劃とプロジェクト実施マニュアル」(630面)発行處: 同上
- B. 7) 「プラント輸出の技術」(233面), 須加基嗣(スガキイシ)著 重化学工業通信社 1977年 11月 発刊
- B. 8) 「プロジェクトエンジニアリハンドブック」
須加・久保園・山崎共著 日刊工業新聞社 1975年 発刊
- B. 9) 「グラブト業界」佐藤公久著, 教育社 1975年 発刊
- B. 10) 「海外工事に強くなるための英語文献の読み方」
施工技術, 月刊誌 1970年 7月号~1971年 7月号
- B. 11) 「契約仕様以前の問題」(佐藤光春)施工技術 月刊誌 1974年 6月号
- B. 12) 「建設請負契約論」荒井八太郎著, 勁草書房, 1967年 発刊
- B. 13) 「英米契法」田中和夫著
- B. 14) 「英文契約書(作成と検討の手引き)」岩崎一生著,
同文館発行
- B. 15) 「パテントとライセンス」土井輝生著
- B. 16) 「国際契約法」坪田洞二郎著
- B. 17) 「国際契約ハンドブック」(871面) 土井輝生篇, 同文館発行
- B. 18) 「技術導入契約の手引き」松永芳雄著
- B. 19) 「技術援助契約の実際」野口良 光長井亞歴山共著
- B. 20) 「プラント輸出の實務」猪間駿三著, 開發社刊
- B. 21) 「アメリカ統一商法典」並木俊守著。
※ 内容目次, 1. 商事法の概要, 2. 買買法 3. 手形小切手
- B. 22) 「アメリカ契約法」並木俊守著
- B. 23) 「国際取引契約」浅田福一著 布井書房發刊
—英文契約のドラフティング—
- B. 24) 「アメリカビジネス法入門」並木俊司著
※ 契約書作成法, 現地法人の設立運営方法の解説
- B. 25) 「輸出入契約書の解説」並木俊司著
※ ※B. 21)~B. 25)を 大成出版社刊
- B. 26) 「技術提携契約」浅田福一著, 国際商事仲裁協會
大阪支部 發刊 大阪商工会議所 貿易實務シリーズ
No. 19
- B. 27) 「技術導入契約の手引き」(1968年刊)
- B. 28) 「技術輸出契約の手引き」(1970年刊)
- B. 29) 「技術援助契約の手引き」(1973年刊) } 松永芳雄
日刊工業新聞社刊 } 著《日經文
庫 206》
- B. 30) 「英文海外 プロジェクト 受注促進 マニュアル

(700面) ※ 主として CHEMICAL PLANT に関する,
1977年 12月 I.P.C 發行

- B. 31) 「日本のプラント輸出戦略」重化学工業通信社
1978年 發行
- B. 32) 「企業海外進出の實務」橋本昭編 ダイヤモンド
社刊
- B. 33) 「英文契約書作成の手引き」辯護士 並木俊守著
中央公論社刊
- B. 34) 「プラント輸出の實務」猪間駿三著 開發社刊
- B. 35) 「和英対照事業買買マニュアル」
- B. 36) 「和英対照ライセンスイソングハンドブック」
- B. 37) 「契約書實例付ライセンスイソングマニュアル」
- B. 38) 「和英対照, ライセンス契約標準條項總覽」
- B. 39) 「和英対照英文買買契約總覽」
- B. 40) 「和英対照ジョイントバンチャアグリメント」
- B. 41) 「和英対照英文ビジネス契約書實例總覽」
※ B. 35~B. 41)を 海外技術資料研究所 發刊

C. 美・英 及 西歐國

- C. 1) 「PUBLIC CONSTRUCTION CONTRACTS AND THE LAW」Sy COHEN McGraw-Hill Book CO, 刊
- C. 2) 「THE INTERNATIONAL CIVIL ENGINEERING CONTRACT」By Wallace SWEET 社刊
- C. 3) 「ENGINEERING CONTRACTS AND SPECIFICATIONS」By ROBERT W. ABETT 日語譯版 있음. FOURTH EDITION 1963 JOHN WILEY & SONS INC,
- C. 4) 「CONSTRUCTION CONTRACTING」By CLOUGH H. RICHARD JOHN WILEY & SONS INC., 1960年刊
- C. 5) 「CONSTRUCTION CONTRACTS」By COLLIER P-H社刊
- C. 6) 「REGAL PROBLEMS IN ENGINEERING」By NORD MELVON JOHN WILEY & SONS INC. 1956年刊
- C. 7) 「CIVIL ENGINEERING PROCEDURE」By THE INSTITUTE OF CIVIL ENGINEERS. 1963年 LONDON, UK 刊
- C. 8) 「CONSTRUCTION OFFICE ADMINISTRATION」By DEATHERAGE E. GEORGE. MCGRAW-HILL BOOK CO, 1963年刊
- C. 9) 「LEGAL ASPECTS OF ENGINEERING」BY RICHARD C. VANGHN PRENTICE-HALL INC.,

- N.J. 1962年刊
- C. 10) 「CONTRACTS SPECIFICATIONS AND ENGINEERING RELATIONS」 BY MEAD ACKERMAN MCGRAW-HILL BOOK CO, 1956年刊
- C. 11) 「CONTRACTS SPECIFICATIONS AND LAIN FOR ENGINEERS BY DUNHAM & YOUNG. MCGRAW-HILL BOOK CO.
- C. 12) 「GORDON'S MODERN ANNOTATED FORMS OF AGREEMENT」(2093面) ORIGINAL AUTHOR SY SAUL GORDON REVISED BY STEPHEN KURZNAN. PRENTICE-HALL INC,
- C. 13) 「GUIDE LINES FOR PROCUREMENT UNDER WORLD BANK LOANS AND IDA CREDITS」 WORLD BANK 刊
- C. 14) 「MODEL FORM OF CONDITIONS OF CONTRACT FOR PROCESS PLANTS」 BY THE INSTITUTION OF CHEMICAL ENGINEERS. UK 刊
- C. 15) 「FEDERAL PROCUREMENT AND CONTRACTING TRAINING NANUAL FOR MINORITY ENTERPRENEORS」 BY U.S. DEPARTMENT OF COMMERCE 1975年刊
- C. 16) 「HANDBOOK OF INTERNATIONAL PURCHASING」 BY PAUL H. COMBS(176面)
 ※ 外資購買上의 TERMS OF PAYMENT, SHIPPING METHODS AND TERNS. TRADING ASSOCIATIONS 等 실려있음. INTERNATIONAL PUSLICATIONS BOOK DEPT, WESTPORT, CONNECTICUT 06880 U.S.A.
- C. 17) 「CONSULTING ENGINEERING ___ A GUIDE FOR THE ENGAGEMENT OF ENGINEERING SERVICES」 美國土木學會發刊 45
- C. 18) 「FACILITIES & PLANT ENGINEERING HANDBOOK」 BY LEWIS & MARRON 外 38人共著 MCGRAW-HILL BOOK CO, 發刊
- C. 19) 「CONSTRUCTION ELECTRICAL CONTRACTING」 BY JOHN E. TRAISCER(299 pages) John Wiley & Sons 1978年間
- C. 20) 「CONSTRUCTION CONTRACTS AND CLAIMS」 BY MICHAEL SIMON(278 pages) MCGRAWHILL BOOK CO, 1979年刊
- C. 21) 「ENGLISHE UND FRANZ FACHSPRACHE IN AUSLANDSBAU」 (English French and german in International construction contracts) Von Lange/Ferval/Kellmann. 120面 DM 18 1979年 Bauerlag 刊
- C. 22) 「THE LAW & PRACTICE OF ARBITRATION」 LONDON, UK
- C. 23) 「ENGINEERING LAW AMD THE I.C.E. CONTRACTS」 4TH EDITION BY ABRAHAMSON ASP 社 UK
- C. 24) 「PREVENTING & SOLVING CONSTRUCTION CONTRACT DISPUTES」 BY HOHNS LITTON 社刊