AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of the Philippines and the People's Republic of Bangladesh hereinafter referred to as the Contracting Parties,

DESIRING to intensify the economic cooperation of both States on the basis of equality and mutual benefits,

INTENDING to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

RECOGNIZING that the reciprocal encouragement, promotion and protection of such investments will be conducive to stimulating business initiative of the investors and will increase prosperity in both States.

HAVE AGREED AS FOLLOWS:

Article I. Definition of Terms

For the purpose of this Agreement:

1. The term "investment" shall mean any kind of asset accepted in accordance with the respective laws and regulations of either Contracting Party, and more particularly:

(a) Movable and immovable property as well as other rights in rem, such as mortgages, liens, pledges, usufructs and similar rights;

(b) Shares of stock and any other kind of participation in companies;

(c) Claims to money or to any other performance having an economic value;

(d) Copyrights, industrial property rights, know-how and technological process;

(e) Concessions conferred by a law, including concessions to search for or exploit natural resources.

2. The term "investors" shall mean:

(a) With respect to the Republic of the Philippines, citizens of the Republic of the Philippines within the meaning of its Constitution.

(b) With respect to People's Republic of Bangladesh, natural persons who have nationality of the People's Republic of Bangladesh in accordance with its laws;

(c) With respect to both countries, legal entities, including companies, associations of companies, trading corporate entities and other organizations that are incorporated or, in any event; are properly organized and actually doing business under the laws of the respective Party and have their headquarters in the territory of the respective Party where effective management is carried out.

3. The term "returns" means the amounts yielded by investments, such as profits, dividends, interest, royalties or other legitimate income.

4. The term "territory" shall mean:

(a) With respect to the Republic of the Philippines, the national territory as defined in Article I of its Constitution.

(b) With respect to the People's Republic of Bangladesh, the territory as defined in its Constitution, including its territorial waters and airspace above it and other maritime zones including exclusive Economic Zone and continental shelf over which the People's Republic of Bangladesh has sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws in force, the 1982 United Nations Convention on the Law of the Sea and International Law.

Article II. Promotion and Acceptance

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its laws and regulations.

2. When a Contracting Party shall have admitted an investment on its territory, it shall grant in accordance with its laws and regulations the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, endeavour to issue the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality.

Article III. Treatment

1. Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, or disposal of such investments.

2. Each Contracting Party shall in its territory accord investments or returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State, whichever is more favourable to the investor concerned.

3. Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment, or disposal of their investments, treatment not less favourable than that which it accords to its own investors or investors of any third State, whichever is more favourable to the investor concerned.

4. The treatment of the most favoured nation according to this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future free trade area, customs union, common market, economic union, or any similar regional economic organisation, to which either Contracting Party is or may become a party, or

(b) Any international agreement relating wholly or mainly to taxation.

Article IV. Expropriation

1. Neither Contracting Party shall take measures of expropriation, nationalization or dispossession, either direct or any measure equivalent thereto against investments belonging to investors of the other Contracting Party, unless the measures are taken in the public interest, public use or in the interest of the national defense on a non-discriminatory basis and under due process of law and upon payment of just compensation.

2. Such compensation shall amount to the market value of the expropriated investment immediately before the impending expropriation becomes public knowledge. The compensation shall be made without undue delay, and shall be effectively realizable and freely transferable.

Article V. Compensation

If a Contracting Party makes restitution, indemnification, compensation or other settlement for losses suffered owing to war, revolution, state of the nation emergency, revolt, insurrection, riot, or other armed conflicts in the territory of such Contracting Party, it shall accord to the investors of the other Contracting Party whose investments in the territory of the former have suffered such losses, treatment no less favourable than that which the Contracting Party shall accord to the investors of any third State. Resulting payments shall be freely transferable.

Article VI. Transfers

1. Each Contracting Party shall, subject to its laws and regulations, guarantee the investors of the other Contracting Party the transfer of their investments and returns held in the territory of the Contracting Party first mentioned:

(a) Profits, dividends, interests and other legitimate income;

(b) Amounts from total or partial liquidation of investments;

(c) Payment made pursuant to a loan agreement in connection with investment;

(d) Royalties in paragraph 1 (d) of Article I;

(e) Amounts assigned to cover expenses relating to technical assistance or technical service and management of the investment;

(f) Amounts in connection with projects on contract undertaken for the investments;

(g) Earnings of nationals of the other Contracting Party who work in connection with an investment in the territory of the Contracting Party first mentioned.

2. The transfers mentioned above shall be made without undue delay in a freely convertibel currency at the market rate of exchange on the date of transfer.

Article VII. Subrogation

In case one Contracting Party has granted any issuance or guarantee agreement against non-commercial risks in respect of an investment made by its own investors in the territory of the other Contracting Party and has made payments to such investors under the guarantee, the other Party shall recognize the transfer of the economic rights of the investors to the said Contracting Party. The subrogation will make it possible for one Contracting Party to receive payments for compensation that the investor would have been entitled to. This does not necessarily imply, however, a recognition on the part of the other Contracting Party of the merits of any case or the amount of any claim arising therefrom.

In respect of property rights or any other rights derived from ownership of the investment, subrogation will take place after the legal requirements of the host Party of the investment have been met.

Article VIII. Settlement of Disputes between Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or applicaton of this Agreement shall, as far as possible, be settled by consultation through diplomatic channels.

2. If a dispute cannot thus be settled within six months, it shall, upon the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal.

3. Such tribunal shall comprise three arbitrators. Within two months from the date on which either Contracting Party receives the written notice requesting for arbitration from the other Contracting Party, each Contracting Party shall appoint one arbitrator. These two arbitrators shall, within further two months, together select a third arbitrator who is a national of a third State which has diplomatic relations with both Contracting Parties. The third arbitrator shall be appointed by the two Contracting Parties as Chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted within four months from the date of the receipt of the written notice for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator(s) who has or have not yet been appointed. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the next most senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointment(s).

5. The arbitral tribunal shall determine its own procedures. The tribunal shall reach its award in accordance with the provisions of this Agreement and the principles of intenationa law recognized by both Contracting Parties.

6. The tribunal shall reach its award by a majority of votes. Such award shall be final and binding on both Contracting Parties. The ad hoc arbitral tribunal shall, upon the request of either Contracting Parties explain the reasons of its award.

7. Each Contracting Party shall bear the cost of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and the tribunal shall be borne in equal parts by the Contracting Parties.

Article IX. Settlement of Disputes between a Contracting Party and an Investor of Another Contracting Party

1. All kinds of disputes or differences, including disputes over the amount of compensation for expropriation or similar measures, between a Contracting Party and an investor or the other Contracting Party concerning an investment or return of investment of that investor in the territory of the other shall be settled amicably through negotiations.

2. If such disputes or differences cannot be settled according to the provisions of paragraph (1) of this Article within six months from the date of request for settlement, the investor concerned may submit the dispute to:

(a) The competent court of the Contracting Party for decision; or

(b) The International Center for the Settlement of Investment Disputes established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, of March 18, 1965 done in Washington, D.C.

3. Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and a Contracting Party has failed to abide by or to comply with the award rendered by the International Center for Settlement of Investment Disputes.

Article X. Other Commitments

If the treatment to be accorded by one Contracting Party in accordance with its laws and regulations to investments or activities associated with such investments of investors of the other Contracting Party is more favourable than the treatment provided for in this Agreement, the more favourable treatment shall be applicable.

Article XI. Application

This Agreement shall apply to investments which are made prior to or after its entry into force by investors of either Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter.

Article XII. Consultation

1. The representatives of the two Contracting Parties shall hold meetings from time to time for the purpose of:

(a) Reviewing the implementation of this Agreement;

(b) Exchanging legal information and investment opportunities;

(c) Resolving dispute arising out of investments;

(d) Forwarding proposals on promotion of investment;

(e) Studying other issues in connection with investments.

2. Where either Contracting Party requests consultation on any matters of paragraph 1 of this Article, the other Contracting Party shall give prompt response and the consultation be held alternatively in Manila and Dhaka.

Article XIII. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the first day of the following month after the date on which both Contracting Parties have notified each other in writing that their respective internal legal procedures have been fulfilled, and shall remain in force for a period of ten years.

2. This Agreement shall continue in force if either Contracting Party fails to give a written notice to the other Contracting Party to terminate this Agreement one year before the expiration specified in paragraph 1 of this Article.

3. After the expiration of the initial ten years period, either Contracting Party may at any time thereafter terminate this Agreement by giving at least one year's written notice to the other Contracting Party.

4. With respect to investments made prior to the date of termination of this Agreement, the provisions of Article I to XII shall continue to be effective for a further period of ten years from such date of termination.

In witness whereof, the duly authorized representatives of their respective Governments have signed this Agreement.

Done in duplicate at Manila on September 1997 in the English language.

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH