

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of the Philippines and the Government of the Kingdom of Sweden hereinafter referred to as the Contracting Parties,

DESIRING to intensify economic cooperation between both States;

INTENDING to create favourable conditions for investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party;

RECOGNIZING that encouragement and protection of such investments will favor the expansion of economic relations and increase prosperity in the territories of 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 invested in accordance with the respective laws and regulations of either Contracting Party, and more particularly, though not exclusively:

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

(b) Shares of stock and debentures of companies, or any other kind of interests in such companies;

(c) Claims to money utilized for the purpose of creating an economic value, or any right to a performance having an economic value;

(d) Intellectual property rights, technical processes, trade names, know-how, goodwill and other similar rights; and

(e) Business concessions conferred by law or administrative decisions or under contract, including concessions to search for, extract or exploit natural resources.

Any alteration of the form in which assets are invested in accordance with the laws and regulations of the Contracting Party where the investment is made, shall not affect their classification as an investment.

Goods which under a leasing agreement are placed at the disposal of a lessee in the territory of one Contracting Party by a lessor being an investor of the other Contracting Party, shall be treated no less favourably than an investment.

2. The term "investor" shall mean:

(a) Natural persons who, with respect to the Republic of the Philippines, are citizens of the Philippines within the meaning of its Constitution, and with respect to the Kingdom of Sweden, natural persons who are citizens of Sweden within the meaning of its laws;

(b) With respect to either Contracting Party, legal entities including companies, associations of companies, trading organizations that are incorporated or, in any event, are properly organized and actually doing business under the laws of the respective Parties or in a third country with a predominant interest of an investor of either Contracting Party.

3. The term "territory" shall mean in respect of each Contracting Party the territory under its sovereignty as well as its exclusive economic zone and continental shelf over which each Contracting Party exercises sovereign rights or jurisdiction in accordance with national and international law.

4. The term "returns" means the amounts yielded by an investment for a definite period of time as profits, such as interest, capital gains, dividends, royalties, fees and other legitimate returns.

Article II. Promotion and Acceptance

Each Contracting Party shall promote, as far as possible, investments in their respective territories by investors of the other Contracting Party and shall admit such investments in accordance with its Constitution, laws and regulations.

Article III. Protection of Investments

1. Each Contracting Party shall at all times ensure fair and equitable treatment of the investments by investors of the other Contracting Party and shall not impair the management, maintenance, use, enjoyment or disposal thereof nor the acquisition of goods and services or the sale of their production, through unreasonable or discriminatory measures.

2. Subject to the laws and regulations relating to the entry and sojourn of aliens, individuals working for an investor of one Contracting Party, as well as members of their household, shall be permitted to enter into, remain on and leave the territory of the other Contracting Party for the purpose of carrying out activities associated with investments in the territory of the latter Contracting Party.

3. The investments made in accordance with the laws and regulations of the Contracting Party in whose territory they are undertaken, enjoy the full protection of this Agreement.

4. Reinvested returns yielded from an investment shall be given the same treatment and protection as an investment.

Article IV. Treatment

1. Each Contracting Party shall, in its territory, accord to investors of the other Contracting Party treatment not less favourable than that which it accords to investments or returns of investments of investors of any third State.

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

3. Each Contracting Party shall, in its territory, apply to investments and investors of the other Contracting Party, with respect to their investments which are made in accordance with the legislation of the Contracting Party and activities related to such investments, a treatment not less favourable than that granted to its own investments and investors, or the treatment granted to the investments and investors of the most favoured nation, if the latter is more favourable.

4. The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to investors of any third State shall not be construed 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 customs union, common market, free trade area, or regional economic organization, or measures leading to the formation of a customs union or free trade area of which either Contracting Party is or may become a member; or

(b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article V. Expropriation

1. Neither Contracting Party shall take any measures depriving, directly or indirectly, an investor of the other Contracting Party of an investment unless the following conditions are complied with:

(a) The measures are taken in the public interest and under due process of law;

(b) The measures are distinct and not discriminatory; and

(c) The measures are accompanied by provisions for the payment of transferable without delay in a freely convertible currency.

2. Such compensation shall be equivalent to the fair market value of the expropriated investment immediately before the impending expropriation of the investment becomes public knowledge.

The provisions of Paragraph (1) and (2) of this Article shall also apply to the returns from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

Article VI. Compensation

Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlements, a treatment which is no less favourable than that accorded to its own investors or to investors of any third State. Resulting payments shall be transferable without delay in a freely convertible currency.

Article VII. Transfers

1. Each Contracting Party shall guarantee the free transfer of payments in connection with investments made in its territory by investors of the other Contracting Party which have been duly registered by its appropriate government agencies if so required, and in particular, though not exclusively:

(a) The returns;

(b) Repayments of loans which have been regularly contracted;

(c) The proceeds from a partial or total liquidation or disposal of the investment, including capital gains on the capital invested;

(d) Compensation for dispossession or loss pursuant to Articles V and VI of this Agreement; and

(e) The earning of individuals, not being its nationals who are allowed to work in connection with an investment in its territory and other amounts appropriated for the coverage of expenses connected with the management of the investment.

2. Transfers of payment shall be made without delay in a freely convertible currency at the market rate of exchange with respect to spot transactions on the date of transfer in the territory of the Contracting Party where the investment is made.

Article VIII. Subrogation

If a Contracting Party or its designated agency makes a payment to any of its investors under a guarantee it has granted in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article XI, recognize the transfer of any right or title of such an investor to the former Contracting Party or its designated agency and the subrogation of the former Contracting Party or its designated agency to any such right or title.

Article IX. Consultation

The Contracting Parties agree to consult each other at the request of either one on any matter relating to investment between the two Contracting Parties, or otherwise affecting the implementation of this Agreement.

Article X. 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 investors of the other Contracting Party, concerning an investment or return of investment of that investor in the territory of the other shall, if possible, 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 (6) 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 (ICSID) established under the Convention on the Settlement of Investment Disputes between the States and Nationals of other States, opened for signature at Washington D.C., 18 March 1965 (Washington Convention).

(c) If the Centre should not be available, the dispute, at the choice of the investor, shall be submitted for settlement by binding arbitration either to the Additional Facility of the Centre, or to an ad hoc arbitral tribunal to be set up under the Arbitration Rules of the United Nations Committee on International Trade Law (UNCITRAL).

3. For the purpose of this Article and in accordance with Article 25 (2) (b) of the said Washington Convention, any legal person which is constituted in accordance with the legislation of one Contracting Party and in which, before a dispute arises, an investor of the other Contracting Party held a predominant interest shall be treated as a legal person of the other Contracting Party.

4. Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration or conciliation in accordance with the provisions of this Article.

5. The consent given by each Contracting Party in paragraph 4, together with the submission of the dispute by an investor under paragraphs 2 (b) and (c) shall satisfy the requirements of:

(a) Chapter II of the Washington Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties to a dispute;

(b) Article I of the UNCITRAL Arbitration Rules for an agreement in writing on referral to arbitration by the parties to a contract; and

(c) Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, executed in New York, June 10, 1958, for an "an agreement in writing".

6. Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute and each Contracting Party shall carry out without delay the provisions of any such award, and provide in its territory for the enforcement of such award.

7. In any proceeding involving an investment dispute, a Contracting party shall not assert as a defense, or a counterclaim, or a right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received, or will be received pursuant to an insurance or guarantee contract.

8. Any arbitration shall, at the request of any party to the dispute under this Article be held in a state that is a Party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, executed in New York, June 10, 1958.

9. Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration, until these proceedings have terminated and a Contracting Party has failed to abide by or to comply with the award rendered by the arbitral tribunal.

Article XI. Settlement of Disputes between Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation and application of this Agreement shall be settled, as far as possible, through friendly consultations by the Contracting Parties.

2. If such disputes cannot thus be settled within six (6) months, from the date on which either Contracting Party requested such consultation in writing, these disputes shall at the request of either Contracting Party, be submitted to an ad hoc international arbitration tribunal.

3. The ad hoc international arbitral tribunal shall be established as follows: It shall be composed of three arbitrators. Each Contracting Party shall appoint one arbitrator; the two arbitrators shall propose the third arbitrator who is to be a national of a third State which has diplomatic relations with both Contracting Parties. The third arbitrator shall be appointed as Chairman of the tribunal by both Contracting Parties.

4. The members of the arbitral tribunal shall be appointed within two (2) months, and the Chairman within four (4) months, from the date either Contracting Party has advised the other Contracting Party of its wish to submit the dispute to an arbitration tribunal.

5. If the time limits referred to in Paragraph (4) of this Article have not been complied with, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the

necessary appointments within three (3) months.

6. Should the President be a national of one Contracting Party, or should he not be able to perform this designation because of other reasons, this task shall be entrusted to the Vice-President of the Court, or to the next senior Judge of the Court, who is not a national of either Contracting Party.

7. The arbitration tribunal shall reach its decision by a majority of votes, the decision being final and binding on the Contracting Parties. Each Contracting Party shall bear the costs of the member appointed by that Contracting Party as well as the costs for its representation in the arbitration proceedings; the cost of the Chairman as well as any other costs shall be borne in equal parts by the two Contracting Parties unless the tribunal decides otherwise.

8. In all other respects, the procedures of the arbitral tribunal shall be decided by the tribunal itself.

Article XII. Application

1. This Agreement shall apply to investments whether made prior to or after the entry into force of this Agreement, provided that such investments have been made in accordance with the laws and regulations of the host Contracting Party at the time the investments were made.

2. This Agreement shall apply irrespective of the existence of diplomatic or consular relations between the two Contracting Parties.

Article XIII. Entry Into Force, Duration and Termination

1. The Contracting Parties shall notify each other when the Constitutional requirements for entry into force of this Agreement have been fulfilled.

2. This Agreement shall enter into force on the first day of the second month following the date of receipt of the last notification.

3. It shall remain in force for a period of twenty (20) years and shall continue in force thereafter unless denounced in writing by either Contracting Party with a term of notice of one year (12 months) before its expiration becomes effective.

4. In respect to investments made prior to the date of termination of this Agreement, its provisions shall continue to be effective for a further period of twenty (20) years from the date of the termination of this Agreement.

Done in duplicate at ____ on ____ in the English language.

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

J. ANTONIO LEVISTE

Governor

Board of Investments

FOR THE GOVERNMENT OF THE KINGDOM OF SWEDEN

BO ERICKSON

Ambassador