

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES CONCERNING THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Indonesia and the Government of the Republic of the Philippines hereinafter referred to as the Contracting Parties;

Bearing in mind the friendly and cooperative relations existing between the two countries and their peoples;

Intending to create favourable conditions for investments by investors of each Contracting Party on the basis of sovereign equality and mutual benefit; and

Recognizing that the Agreement on the Promotion and Protection of such Investments will be conducive to the stimulation of investment activities in both countries;

HAVE AGREED AS FOLLOWS:

Article I. Definitions

For the purpose of this Agreement:

1. The term "investments" means any kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party and admitted in conformity with the laws and regulations of the latter, including, but not exclusively:

- a. movable and immovable property as well as other rights such as mortgages, liens, pledges, usufructs, privileges, and guarantees and any other similar rights relative thereto;
- b. rights derived from shares, bond or any other form of interest in companies or joint venture in the territory of the other Contracting Party;
- c. claims to money or to any performance having an economic value;
- d. intellectual property rights, technical processes, goodwill and know-how;
- e. business concessions conferred by law or under contract related to investment including concessions to search for or exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their character as an admitted investment provided that such alteration has also been approved or admitted under Article II hereof.

2. The term "investor" means the following subjects which have made an investment in the territory of the other Contracting Party in accordance with the present Agreement:

- a. natural persons who, according to the law of that Contracting Party, are considered to be its nationals;
- b. legal persons that are constituted, incorporated or in any event, are properly organized and actually doing business under the laws of the respective Contracting Party and have their effective economic activities in the territory of the respective Contracting Party where effective management is carried out;

3. The term "without delay" means such period as is normally required for the completion of the necessary formalities for the transfer of payments.

4. The term "territory" means:

a. In respect of the Republic of Indonesia:

The territory of the Republic of Indonesia as defined in its laws and

The adjacent areas over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with international law;

b. In respect of the Republic of the Philippines:

The term Philippines shall refer to the territory of the Republic of the Philippines in accordance with its Constitution and laws including adjacent areas and such other areas over which the Republic has sovereign rights and other rights under international law.

Article II. Promotion, Admission and Protection of Investments

1. Either Contracting Party shall promote, encourage and create favourable conditions for investors of the other Contracting Party to invest in its territory, and shall admit such investments in accordance with its laws and regulations.

2. Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy adequate protection and security in the territory of the other Contracting Party.

Article III. Most-favoured-nation Provisions

1. Each Contracting Party shall ensure fair and equitable treatment of the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof.

2. More particularly, each Contracting Party shall accord to such admitted investments and returns of investments treatment which in any case shall not be less favourable than that accorded to admitted investments or returns of investments of investors of any third State.

3. If a Contracting Party has accorded special advantages to investors of any third State by virtue of agreements establishing customs unions, economic unions, monetary unions or similar institutions, or on the basis of interim agreements leading to such unions of institutions, that Contracting Party shall not be obliged to accord such advantages to investors of the other Contracting Party.

Article IV. Expropriation

Each Contracting Party shall not undertake any measures of expropriation, nationalization or any other dispossession, having effect equivalent to nationalization or expropriation against the investments of an investor of the other Contracting Party except under the following conditions:

(a) the measures are taken for a public purpose and in accordance with legal process;

(b) the measures are non-discriminatory;

(c) the measures are accompanied by provisions for the prompt payment of adequate and effective compensation. Such compensation shall amount to the fair market value of the properties expropriated before the measure of dispossession became public knowledge. Such market value shall be determined in accordance with internationally acknowledged practices and methods or, where such fair market value cannot be determined, it shall be such reasonable amount as may be mutually agreed upon between the Contracting Parties and it shall be freely transferable and in freely convertible currencies.

Article V. Compensation for Losses

1. Investors of one Contracting Party, whose investments in the territory of the other Contracting Party suffer losses owing to war, civil war, or other armed conflict, revolution, a state of national emergency, revolt, insurrection in the territory of the latter Contracting Party, shall be accorded by the latter

Contracting Party as regards restitution, indemnification, compensation or other settlement.

2. Treatment shall not be less favourable than that which the latter Contracting Party accords to its own investors or

investors of any third state, whichever is more favourable to the investors concerned.

Article VI. Transfer

1. Either Contracting Party shall allow within the scope of its laws and regulations, in respect to investments by investors of the other Contracting Party the free transfer of:

- a. profits, interests, dividends and other current income;
- b. funds necessary for its investment and/or in repayment of loans related to admitted investments;
- c. royalties or fees;
- d. earnings of natural persons;
- e. the proceeds of sale or liquidation of the investment;
- f. compensation for losses and expropriation.

2. Such transfer shall be made without undue delay and at the prevailing rate of exchange on the date of transfer with respect to current transaction in the currency to be transacted.

Article VII. Subrogation

Where one Contracting Party or an agency authorized by the Contracting Party has granted a contract of insurance or any form of financial guarantee against noncommercial risks with regard to an investment by one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party by virtue of the principle of subrogation to the rights of the investor when payment has been made under the subject contract or financial guarantee by the first Contracting Party. However, the insurer or re-insurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.

Article VIII. Settlement of Disputes between an Investor and the Contracting Party

1. Any dispute between a Contracting Party and an investor of the other Contracting Party, concerning an investment of the latter in the territory of the former, shall be settled amicably through consultations and negotiations.

2. If such dispute cannot be settled within a period of six months from the date of a written notification for settlement, the dispute shall, at the request of the investor concerned, be submitted either:

- a. to the competent tribunal of the Contracting Party in whose territory the investment was made; or
- b. to international arbitration of the International Center for the Settlement of Investment Disputes (ICSID), created by the Convention on the Settlement of Disputes Between States and Nationals of Other States, opened for signature at Washington, D.

C, on March 18, 1965.

Article IX. Settlement of Disputes between the Contracting Parties Concerning Interpretation and Application of the Agreement

1. The Contracting Parties shall endeavor to resolve any difference between them regarding the interpretation or application of the provisions of this Agreement by friendly negotiations or through other diplomatic channels.

2. If the difference cannot thus be settled within six months following the date of notification of the difference, either Contracting Party may submit it to an Arbitral Tribunal in accordance with this Article.

3. The Arbitral Tribunal shall be formed by three members and shall be constituted as follows: within three months of the notification by a Contracting Party of its desire to settle the dispute by arbitration, each Contracting Party shall appoint one member. These two members shall then, within thirty days of the appointment of the last one, agree upon a third member who shall be a national of a third country and who shall act as the Chairman. The appointment of the Chairman shall be approved by the Contracting Parties within thirty days of that persons nomination.

4. If within the time limits provided for in paragraphs (2) and (3) of this Article the required appointment has not been made

or the required approval has not been given, either Contracting Party may request the President of the International Court of Justice to make the necessary appointment. If the President of the International Court of Justice is prevented from carrying out the said function or if that person is a national of either Contracting Party, the appointment shall be made by the VicePresident, and if the latter is prevented or if that person is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

5. The Chairman of the Tribunal shall be a national of a third country which has diplomatic relations with both Contracting Parties.

6. The Arbitral Tribunal shall reach its decisions taking into account the provisions of this Agreement, the principles of international law on this

Subject and the general principles of law as recognized by the Contracting Parties. The Tribunal shall reach its decisions by a majority vote and shall determine its procedure.

7. Each Contracting Party shall bear the cost of the arbitrator it has appointed and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties unless agreed otherwise.

8. The decision of the Arbitral Tribunal shall be final and binding on both Contracting Parties.

Article X. Applicability of this Agreement

1. This Agreement shall apply to investments by investors of the Republic of the Philippines in the territory of the Republic of Indonesia which have been granted admission in accordance with the Law No. 1 of 1967 concerning Foreign Investment and any law amending or replacing it, and to investments by investors of the Republic of Indonesia in the territory of the Republic of the Philippines which have been previously granted admission in accordance with its laws and regulations and any law amending or replacing it.

2. The provisions of this Agreement shall not apply to any disputes, claim or difference which arose before its entry into force.

Article XI. Application of other Provisions

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall to the extent that it is more favourable prevail over the present Agreement.

Article XII. Consultation and Amendment

1. Either Contracting Party may request that consultations be held on any matter concerning this Agreement. The other Contracting Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

2. This Agreement may be amended at any time, if deemed necessary, by mutual consent of the Contracting Parties.

Article XIII. Entry Into Force, Duration and Termination

1. The present Agreement shall enter into force three months after the date of the latest notification by the Contracting Parties in writing through diplomatic channels of the accomplishment of their constitutional and internal legal requirements and procedures of ratification.

2. This Agreement shall remain in force for a period of ten (10) years. It shall remain in force thereafter until either Contracting Party notifies the other Contracting Party in writing of the intention to terminate this Agreement. The notice of termination shall become effective one year after the date of notification.

3. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Article I to XII shall remain in force for a further period of ten years from the date of termination of the present Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Jakarta on November 12, 2001 in Indonesian and English languages.

All texts are being equally authentic. If there is any divergence concerning the interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

Signed

Signed

Dr. MAJNARIJVF WIBISONO

AINARIK

Director-General for Foreign Economic Relations Department of Foreign Affairs of the Republic of Indonesia

To Indonesia