

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE REPUBLIC OF FINLAND ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of the Philippines and the Government of the Republic of Finland

Desiring to create and maintain favourable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Parties;

Recognising that the encouragement and protection of such investments on the basis of an Agreement will be conducive to the stimulation of business initiatives, transfer of capital and technology and increasing economic prosperity of both Contracting Parties;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1) The term "Investment" means every kind of asset, established or acquired by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party, and in particular, though not exclusively, includes:

(a) Movable and immovable property as well as reinvested returns, and property rights such as mortgages, liens, pledges, leases, usufructs and other similar rights;

(b) Shares and debentures of a company and any other forms of participation in a company;

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

(d) Intellectual property rights, such as patents, copyrights, industrial designs, technical processes, know-how and goodwill;

(e) Rights or permits conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any admitted alteration of the form in which assets are invested shall not affect their classification as an investment. 2) The term "Returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profits, capital gains, dividends, royalties and fees.

3) The term "investor" means:

(a) Any natural person who is a citizen of the Contracting Party in accordance with its laws, or

(b) Any legal person, including a corporation, firm or association incorporated or constituted in accordance with the laws and regulations of a Contracting Party and having its seat in the territory of that Contracting Party.

Article 2. Promotion, Admission and Protection of Investments

1) Each Contracting Party shall promote in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

2) Investments by investors of one Contracting Party shall at all times enjoy full protection and security in the territory of the other Contracting Party. The said Contracting Party shall in no way by unreasonable or discriminatory measures impair the management, maintenance, use, operation, enjoyment or disposal of investments by investors of the other Contracting

Party.

3) The host Party shall, within the framework of its legislation, give a sympathetic consideration to applications by investors of the other Contracting Party for necessary permits in connection with the investments in its territory, including authorisations for engaging top managerial and technical personnel of their choice.

Article 3. Treatment of Investments

1) Each Contracting Party shall guarantee fair and equitable treatment to investments made by investors of the other Contracting Party in its territory.

2) Each Contracting Party shall accord admitted investments of investors of the other Contracting Party in its territory treatment which is no less favourable than that accorded to investments or returns of investments by its own investors or by investors of any third State, whichever is more favourable to the investor.

3) Each Contracting Party shall accord investors of the other Contracting Party, as regards the management, maintenance, use, operation, enjoyment or disposal of their investments, treatment which is no less favourable than the host Party accords to its own investors or to investors of any third State, whichever is more favourable to the investor.

4) The provisions of this Agreement, relative to the granting of treatment no less favourable than that accorded to investors of either Contracting Party or of any third State, shall not be construed so as to oblige the host Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) Any regional economic organisation or customs union of which the host Party is or may become a party;

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

(c) A multilateral convention or treaty related to investments, of which, one of the Contracting Parties is or may become a party.

5) If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this 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 this Agreement, such a regulation shall to the extent that it is more favourable prevail over this Agreement. Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

Article 4. Compensation for Losses

A Contracting Party shall accord to investors of the other Contracting Party whose investments in the territory of the host Party have suffered losses owing to war, revolution, a state of national emergency, revolt, insurrection, riot or other armed conflicts a restitution, indemnification, compensation or other settlement, no less favourable than that which the Contracting Party accords for losses suffered on the investments of its own investors or investors of any third State, whichever is more favourable to the investor.

Article 5. Expropriation

1) Investments by investors of one Contracting Party in the territory of the other Contracting Party shall not be nationalised, expropriated or subjected to other direct or indirect measures having the same effect unless the measures are taken in the public interest and against prompt, effective and adequate compensation.

2) Such compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation or the impending expropriation became public knowledge. The compensation shall be effectively realisable and freely transferable. In the event that payment of compensation is unduly delayed, compensation shall also include interest at the London Interbank Offered Rate (LIBOR) for three months deposits until the date of actual payment.

3) The legality of any such expropriation or measures having the same effect and the amount of compensation shall be subject to review by due process of law.

Article 6. Free Transfer

1) Each Contracting Party shall ensure without delay the investors of the other Contracting Party the unrestricted transfer of payments in connection with an investment into and out of its territory in a freely convertible currency, particularly of:

(a) The principal and additional amounts to maintain or increase the investment;

(b) Interests, dividends, profits and other returns;

(c) Repayments of a loan agreement related to the investment;

(d) Any proceeds from the partial or total sale or liquidation of the investments;

(e) Compensation for loss or expropriation described in Articles 4 and 5 of this Agreement;

(f) The earnings 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; and

(g) Payments arising out of settlement of disputes.

2) The Contracting Party shall further ensure that transfers of payments 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 7. Subrogation

1) If a Contracting Party or its designated agency makes a payment to its own investor under a guarantee against noncommercial risks it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment, whether under law or pursuant to a legal transaction, to the former Contracting Party, of all the rights and claims resulting from such an investment, and shall recognise that the former Contracting Party or its designated agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the original investor.

2) Where a Contracting Party has made a payment to its investors and has taken over the rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Contracting Party making the payment, pursue those rights and claims against the other Contracting Party.

Article 8. Consultation

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

Article 9. Application of the Agreement

This Agreement shall apply to all Investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any such claim which was settled before its entry into force.

Article 10. Disputes between an Investor and the Contracting Party

1) Disputes between an investor of one Contracting Party and the other Contracting Party should be settled amicably.

2) If such disputes cannot be settled within three months from the date of request for settlement, the investor concerned may submit the dispute to:

(a) The International Center for the Settlement of Investment Disputes (ICSID) established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington, D.C. on March 18, 1965; or

(b) To an ad hoc arbitration tribunal, which unless otherwise agreed upon by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3) The award shall be final and binding on the parties to the dispute and shall be executed according to national law.

4) 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 or to comply with paragraph (3) of this Article.

Article 11. Disputes between the Contracting Parties

1) Disputes between the Contracting Parties concerning the interpretation and implementation of this Agreement should be settled, as far as possible, through diplomatic channels.

2) If such disputes cannot be settled within six months from the date on which either Contracting Party informs in writing the other Contracting Party, they shall, at the request of either Contracting Party be submitted for settlement to an ad hoc international Arbitral Tribunal.

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

4) If the appointments of the members of the Arbitral Tribunal are not made within a period of six months from the date of request for arbitration, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments within three months. Should the President be a national of one Contracting Party or should the President 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 and is not otherwise precluded from performing this designation.

5) The Arbitral Tribunal shall determine its own procedure. The Arbitral Tribunal shall reach its decision by a majority of votes, the decision being final and binding upon the Contracting Parties.

6) Each Contracting Party shall bear the cost of its own member of the Arbitral Tribunal and of its representation in the arbitral proceedings. The costs of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The Arbitral Tribunal may, however, direct a larger portion of costs to be borne by one of the Contracting Parties.

Article 12. Final Clauses

1) The Contracting Parties shall notify each other when the constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the thirtieth day after the date of the latter notification.

2) This Agreement shall remain in force for fifteen years. Thereafter, it shall remain in force until one of the Contracting Parties gives one year's prior written notice of termination through diplomatic channels.

3) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall remain in force for a further period of fifteen years.

4) This Agreement shall be applicable irrespective of whether diplomatic or consular relations exist between the Contracting Parties.

Done at Manila on March 25, 1998 in two originals in the English language.

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

FOR THE GOVERNMENT OF THE REPUBLIC OF FINLAND