

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of India and the Government of the Republic of the Philippines (hereinafter referred to as the "Contracting Parties");

Desiring to intensify economic cooperation to the mutual benefit of both countries:

Intending to create and maintain favourable conditions for Investments by Investors of one Contracting Parties in the territory of the other Contracting Party;

Recognising that the reciprocal promotion and protection of such foreign investments favour economic prosperity of both countries;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. "Investment" means every kind of asset established or acquired, in accordance with the laws of the Contracting Party in whose territory the Investment is made and in particular, though not exclusively, includes:

- a) Movable and immovable property as well as other rights such as mortgages, liens, pledges or usufructs;
- b) Shares of stock and debentures of a company and any other similar forms of participation in a company;
- c) Rights to money or to any performance under contract having a financial value;
- d) Intellectual property rights in accordance with the relevant laws of the respective Contracting Party;
- e) Business concessions conferred by law or under contract, including concessions to search for and extract or exploit natural resources.

2. "Nationals" means:

- a) In respect of the Republic of India: person deriving their status as Indian nationals from the law in force in India;
- b) In respect of the Republic of the Philippines: citizens of the Philippines within the meaning of article IV of its Constitution.

3. "Companies" means:

- a) In respect of the Republic of India: corporations, firms and associations incorporated or constituted or established under the law in force in any part of India;
- b) In respect of the Republic of the Philippines: corporations, partnerships or other associations, incorporated or constituted and actually doing business under the laws in force in any part of the territory of that Contracting Party wherein a place of effective management is situated. Provided that any particular company may be excluded from the foregoing definition by mutual agreement between the Contracting Parties on grounds of the need to maintain public order, to protect essential security interest or to fulfill commitments relating to peace and security.

4. "Investor" means any national or company of a Contracting Party, as defined in paragraphs 2 and 3 above.

5. "Returns" means the amounts yielded by an investment such as, but not limited to, profits, interest, capital gains,

dividends, royalties and fees.

6. "Territory" means:

a) In respect of the Republic of India: the territory of the Republic of India including its territorial waters and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of India 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;

b) In respect of the Republic of the Philippines, the national territory as defined in Article I of its Constitution.

Article II. Scope of the Agreement

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, accepted as such in accordance with its laws and regulations, whether made before or after the coming into force of this Agreement.

Article III. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and admit such investments in accordance with its laws and policy.

2. Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party.

Article IV. Treatment

1. Each Contracting Party shall accord 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 the investors of the other Contracting Party in its territory a treatment which is no less favourable than that accorded to investments made by its own investors or by investors of any third country, whichever is more favourable.

3. In addition, each Contracting Party shall accord to investors of the other Contracting Party, treatment which shall not be less favourable than that accorded to investors of any third State.

4. The provisions of paragraphs 1,2 and 3 above shall not be construed so as to oblige the other Contracting Party to extend to the 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 or similar international agreement to which it is or may become a party; or

b. Any matter pertaining wholly or mainly to taxation.

Article V. Expropriation

1. Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose in accordance with law on a non-discriminatory basis. Such measure shall be accompanied by provisions for payment of fair and equitable compensation without undue delay. Such compensation shall amount to the genuine value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a fair and equitable rate until the date of payment, shall be made without unreasonable delay, be effectively realizable and be freely transferable.

2. The investor affected shall have right, under the law of the Contracting Party making the expropriation, to review, by a judicial authority or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in the paragraph above. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out expeditiously.

3. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to ensure fair and equitable compensation in respect of the investment to such investors of the other Contracting Party who are owners of those shares.

Article VI. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency or civil disturbances in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable.

Article VII. Transfers

Each Contracting Party shall permit all funds of an investors of the other Contracting Party related to an investment in its territory to be freely transferred, without unreasonable delay and on a nondiscriminatory basis. Such funds may include:

- a. Capital and additional capital amounts to maintain or increase the investments;
- b. Net operating profits including dividends and interest in proportion to their share-holdings;
- c. Repayment of loan including interest thereon, relating to the investment;
- d. Payment of royalties and service fees relating to the investment;
- e. Proceeds from sales of their shares;
- f. Proceeds received by investors in case of sale or partial sale of liquidation;
- g. The earnings of citizens/nationals of one Contracting Party who work in connection with investment in the territory of the other Contracting Party.

2. Nothing in paragraph (1) of this Article shall affect the transfer of any compensation under Article VI of this Agreement.

3. Such transfers shall be made in the currency of the original investment or any other convertible currency at the prevailing market rate of exchange on the date of transfer.

Article VIII. Subrogation

1. In case on Contracting Party or its designated agency has granted any insurance 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 payment to such investors under the guarantee, the latter Contracting Party shall recognize that the first Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and assert the claims of those investors. The subrogated rights or claims shall not exceed the original rights or claims of such investors.

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

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

1. Any disputes between an investor of one Contracting Party and the other Contracting Party in relation to an investment of the former under this Agreement shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2. If such dispute 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 may submit the dispute to:

- a) The competent judicial, arbitral or administrative bodies of the Contracting Party for decision; or
- b) If the Contracting Party of the investor and the other Contracting Party are both parties to the Convention on the

Settlement of Investment Disputes between States and Nationals of other States, of March 18, 1965 and the investor consents in writing to submit the dispute to the International Centre for the Settlement of Investment Disputes, such a dispute shall be referred to the Center; or

c) To international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law; or

d) To an ad-hoc arbitral tribunal by either party to the dispute in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, 1976, subject to the following modifications:

i) The appointing authority under Article 7 of the Rules shall be the President, the Vice President or next Senior Judge of the International Court of Justice, who is not a national of either Contracting Party. The third arbitrator shall not be a national of either Contracting Party.

ii) The parties shall appoint their respective arbitrators within two months.

iii) The arbitral award shall be made in accordance with the provisions of this Agreement and shall be binding on the parties to the dispute.

iv) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.

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 arbitral tribunal.

Article X. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, as far as possible, be settled through negotiations.

2. If a dispute between the Contracting Parties cannot thus be settled within six months from the time the dispute arose, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following manner. Within two months of receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

4. If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties.

6. The arbitral tribunal shall determine its own procedure. Each Contracting Party shall bear the cost of its own member of the tribunal 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. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties.

Article 11. Entry and Sojourn of Personnel

A Contracting Party shall, subject to its laws applicable from time to time relating to the entry and sojourn of non-citizens, permit natural persons of the other Contracting Party and personnel employed by companies of the other Contracting Party to enter and remain in its territory for the purpose of engaging in activities connected with investments.

Article 12. Applicable Laws

1. Except as otherwise provided in this Agreement, all investments shall be governed by the laws in force in the territory of

the Contracting Party in which such investments are made.

2. Notwithstanding paragraph 1 of in this Agreement precludes the host Contracting Party from taking action for the protection of its essential security interests or in circumstances of extreme emergency in accordance with its laws normally and reasonably applied on a non discriminatory basis.

Article 13. Application of other Rules

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

Article 14. Entry Into Force, Duration and Termination

1. The present Agreement is subject to ratification in the Republic of India and in the Republic of the Philippines subject to approval by its President.

2. This Agreement shall enter into force on the sixty first day following the date of exchange of the Indian instrument of ratification and the Philippines notification of approval.

3. This Agreement shall remain in force for a period of ten years and thereafter it shall be deemed to have been automatically extended unless either Contracting Party gives to the other Contracting Party a written notice of its intention to terminate the Agreement. The Agreement shall stand terminated one year from the date of receipt of such written notice.

4. Notwithstanding termination of this Agreement pursuant to paragraph (2) of this article, the Agreement shall continue to be effective for a further period of fifteen years from the date of its termination in respect of investments made or acquired before the date of termination of this Agreement.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done at Manila on this 28th Day of January, 2000 in two originals each in the English and Hindi languages both texts being authoritative.

In case of divergence of interpretation, the English text shall prevail.

For the Government of For the Government of the the Republic of India Republic Philippines