

AGREEMENT between the Republic of Austria and the Republic of the Philippines for the Promotion and Reciprocal Protection of Investments

THE REPUBLIC OF AUSTRIA AND THE REPUBLIC OF THE PHILIPPINES hereinafter referred to as the Contracting Parties,

DESIRING to create favourable conditions for greater economic co-operation between the Contracting Parties;

RECOGNIZING that the promotion and protection of investments will strengthen the readiness for such investments and thereby make an important contribution to the development of economic relations,

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investment" comprises all assets and in particular, though not exclusively:

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

(b) Shares and other types of participation in undertakings;

(c) Claims to money that has been given in order to create an economic value or claims to any performance having an economic value;

(d) Intellectual and industrial property rights, as defined in the multilateral agreements concluded under the auspices of the World Intellectual Property Organization, including, but not limited to, copyright, trademarks, patents, industrial designs and technical processes, know-how, trade secrets, trade names and goodwill;

(e) Business concessions granted in accordance with the laws and regulations of the respective Contracting Party, including concessions to search for, extract or exploit natural resources.

(2) The term "investor" means

(a) With respect to the Republic of Austria: natural persons who are citizens of the Republic of Austria and make an investment in the other Contracting Party's territory;

(b) With respect to the Republic of the Philippines: individuals who are citizens of the Philippines within the meaning of its Constitution and make an investment in the other Contracting Party's territory;

(c) With respect to the Republic of Austria: any juridical person, or partnership, constituted in accordance with the legislation of the Republic of Austria, having its seat in the territory of the Republic of Austria and making an investment in the other Contracting Party's territory and any juridical person, or partnership, constituted in accordance with the legislation of a Contracting Party or of a Third Party in which the investor referred to above exercises effective control;

(d) With respect to the Republic of the Philippines: legal entities, including companies, associations of companies, trading corporate entities and other organizations that are incorporated or, in any event properly organized and actually doing business under the laws of the Republic of the Philippines and have their headquarters in the territory of the Republic of the Philippines where effective management is carried out, as well as corporations organized abroad, effectively controlled by Philippine nationals and registered as doing business under Philippine laws.

(3) The term "returns" means the amounts yielded by an investment, and in particular, though not exclusively, profits,

interests, capital gains, dividends, royalties, license and other fees.

(4) The term "territory" means 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 its national law and international law.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall in its territory promote, as far as possible, investments of investors of the other Contracting Party, admit such investments in accordance with its legislation and in any case accord such investments fair and equitable treatment.

(2) Investments admitted according to Article 1 paragraph (1) and their returns shall enjoy the full protection of the present Agreement. The same applies without prejudice to the regulations of paragraph (1) also for their returns in case of reinvestment of such returns. The legal extension, alteration or transformation of an investment has to be made in accordance with the legislation of the respective Contracting Party.

Article 3. Treatment of Investments

(1) Each Contracting Party shall accord to investors of the other Contracting Party and their investments treatment no less favourable than that accorded to its own investors and their investments or to investors of any third State and their investments.

(2) The provisions of paragraph (1) shall not be construed as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the present or future benefit of any treatment, preference or privilege resulting from

(a) Any customs union, common market, free trade area, membership in an economic community or multilateral investment agreement;

(b) Any international agreement, international arrangement or domestic legislation regarding taxation.

Article 4. Expropriation

(1) Investments of investors of either Contracting Party shall not be expropriated, nationalized or subjected to any measure having equivalent effect (hereinafter referred to as expropriation) in the territory of the other Contracting Party except for a public purpose by due process of law and accompanied by prompt, adequate and effective compensation.

(2) Such compensation shall be equivalent to the fair market value of the expropriated investment immediately before the date on which the expropriation has occurred. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier. The compensation shall be paid without delay. In the event that the payment of compensation is delayed, the compensation shall include interest at the prevailing commercial rate from the date of expropriation until the date of payment. The compensation shall be effectively realizable and freely transferable in any freely convertible currency. Provision shall be made in an appropriate manner at or prior to the time of expropriation for the determination and payment of such compensation.

(3) For the avoidance of doubt, 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 territory and in which an investor of the other Contracting Party owns shares, it shall apply the provisions of paragraph (1) of this Article so as to ensure due compensation provided for in that paragraph to such investors to the extent of their interest in the assets expropriated.

(4) The investor shall be entitled to have the legality of the expropriation reviewed by the competent authorities of the Contracting Party having initiated the expropriation.

(5) The investor shall be entitled to have the amount and the provisions for the payment of the compensation reviewed either by the competent authorities of the Contracting Party having initiated the expropriation or by an international arbitral tribunal according to Article 9 of the present Agreement.

Article 5. Compensation for Damage or Loss

(1) When investments made by investors of either Contracting Party suffer damage or loss owing to war or other armed

conflict, a state of national emergency, revolt, civil disturbances, insurrection, riot or other similar events in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that the latter Contracting Party accords to its own investors or investors of any third state, whichever is the most favourable.

(2) Without prejudice to paragraph 1, investors of one Contracting Party who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting Party resulting from:

- (a) Requisition of their property or part thereof by the forces or authorities of the latter Contracting Party, or
- (b) Destruction of their property or part thereof by the forces or authorities of the latter Contracting Party which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded prompt restitution or prompt and adequate compensation where restitution is not possible for the damage or loss sustained. Resulting payments shall be made in a freely convertible currency and be freely transferable without undue delay.

Article 6. Transfers

(1) Each Contracting Party shall guarantee without undue delay to investors of the other Contracting Party free transfer in freely convertible currency of payments in connection with an investment, in particular but not exclusively, of the

- (a) Capital and additional amounts for the maintenance or extension of the investment;
- (b) Amounts assigned to cover expenses relating to the management of the investment;
- (c) Returns;
- (d) Repayment of loans;
- (e) Proceeds from total or partial liquidation or sale of the investment;
- (f) Compensation payment for expropriation, damage or loss; or
- (g) Payments arising out of a settlement of a dispute.

(2) The payments referred to in this Article shall be effected at the market rate of exchange prevailing on the day of the transfer.

(3) The rates of exchange shall be determined according to the quotations on the stock exchanges or in the absence of such quotations according to the spot transactions conducted through the respective banking system in the territory of the respective Contracting Party.

(4) The term "without undue delay" means such period as is normally required for the completion of necessary formalities for the transfer of payments. The said period shall commence on the day on which the request for transfer has been submitted and may on no account exceed two months.

Article 7. Subrogation

Where one Contracting Party or an institution authorized by it makes payments to its investor by virtue of a guarantee for an investment in the territory of the other Contracting Party, the other Contracting Party shall without prejudice to the rights of the investor of the first Contracting Party under Article 9 of the present Agreement and to the rights of the first Contracting Party under Article 10 of the present Agreement recognize the assignment to the first Contracting Party of all rights and claims of this investor under a law or pursuant to a legal transaction. The latter Contracting Party shall also recognize the subrogation of the former Contracting Party to any such rights or claims which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments to the Contracting Party concerned by virtue of such assignment, Articles 4, 5 and 6 of the present Agreement shall apply *mutatis mutandis*.

Article 8. Other Obligations

(1) If the provisions of law of either Contracting Party or international obligations existing at present or established thereafter between the Contracting Parties in addition to the present Agreement, contain a rule, 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 rule shall to the extent that it is more favourable prevail over the present Agreement.

(2) Each Contracting Party shall observe any contractual obligation it may have entered into towards an investor of the other Contracting Party with regard to investments approved by it in its territory.

Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) Any dispute arising out of an investment, between a Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled amicably between the parties to the dispute.

(2) In the event that the dispute cannot be settled amicably, the party concerned may choose to submit the dispute for resolution:

(a) To the courts or administrative tribunals of the Party that is a party to the dispute; or

(b) In accordance with any applicable, previously agreed dispute-settlement procedures.

(3) If such a dispute between an investor of one Contracting Party and the other Contracting Party continues to exist after a period of six months, the investor shall be entitled to submit the case either to:

(a) International arbitration of the International Centre for Settlement of Investment Disputes established pursuant to the Convention on the Settlement of Investment Disputes Between States and Nationals of other States opened for signature at Washington D.C. on 18 March 1965 (ICSID Convention),

(b) An arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(4) Each Contracting Party, by this Agreement irrevocably and unconditionally consents in advance to submit any such disputes to international arbitration, if the investor so chooses.

(5) The award shall be final and binding; it shall be executed according to national law; each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with its relevant laws and regulations.

(6) A Contracting Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise the objection that the investor who is the other party to the dispute has received indemnity by virtue of a guarantee in respect of all or some of its losses.

Article 10. Settlement of Disputes between the Contracting Parties

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

(2) If a dispute according to paragraph (1) cannot be settled within six months it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member and these two members shall agree upon a national of a third State as their Chairman. Such members shall be appointed within two months from the date one Contracting Party has informed the other Contracting Party, that it intends to submit the dispute to an arbitral tribunal, the Chairman of which shall be appointed within two further months.

(4) If the periods specified in paragraph (3) are not observed, 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. If the President of the International Court of Justice is a national of either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-President or in case of his inability the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.

(5) The tribunal shall establish its own rules of procedure.

(6) The arbitral tribunal shall reach its decision by virtue of the present Agreement and pursuant to the generally recognized rules of international law. It shall reach its decision by a majority of votes; the decision shall be final and binding.

(7) Each Contracting Party shall bear the costs of its own member and of its legal representation in the arbitration proceedings. The costs of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties.

The tribunal may, however, in its award determine another distribution of costs.

Article 11. Application of the Agreement

This Agreement shall apply to investments made in the territory of one of the Contracting Parties in accordance with its legislation by investors of the other Contracting Party prior to as well as after the entry into force of this Agreement.

Article 12. Entry Into Force and Duration

(1) This Agreement is subject to ratification and shall enter into force on the first day of the third month that follows the month during which the instruments of ratification have been exchanged.

(2) This Agreement shall remain in force for a period of ten years; it shall be extended thereafter for an indefinite period and may be denounced in writing through diplomatic channels by either Contracting Party giving twelve months' notice.

(3) In respect of investments made prior to the date of termination of the present Agreement the provisions of Articles 1 to 11 of the present Agreement shall continue to be effective for a further period of five years from the date of termination of the present Agreement.

For the Republic of Austria:

Johann DEMEL

For the Republic of the Philippines:

Thomas G. AQUINO