# AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF SAUDI ARABIA AND THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Kingdom of Saudi Arabia and the Government of the Republic of the Philippines hereinafter referred to as "the Contracting Parties".

Desiring to intensify economic cooperation between both States.

Intending to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party, and to increase prosperity in their respective territories;

Recognizing that encouragement and protection of such investments will benefit the economic prosperity of both States;

Have agreed as follows:

## Article 1.

For the purposes of this Agreement;

1. the term "investment" means every kind of asset, owned or controlled by an investor of a Contracting Party in the territory of the other Contracting Party according to its legislation and in particular, but not exclusively includes:

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

b) shares, stocks and debentures of companies and other kinds of rights or interests in companies as well as securities issued by a Contracting Party or any of its investors;

c) claims to money such as loans or to any performance having an economic value, associated with an investment;

d) intellectual property rights, including but not limited to copyrights, patents, industrial designs, know-how, trademarks, trade and business secrets, trade names, good-will;

e) any right conferred by law or under public contract or any licenses, permits or concessions issued according to law;

any alteration of the form in which assets are invested or reinvested shall not affect their classification as investment, provided that such alteration is not in conflict with the legislation of the Contracting Party in the territory of which the investment is made.

2. the term "returns" means the amounts yielded by an investment in particular profit, dividends, royalties, capital gains or any similar fees Or payments;

3. The term "investor" means:

a) in respect of the Kingdom of Saudi Arabia:

i. natural persons possessing the nationality of the Kingdom of Saudi Arabia in accordance with the law of the Kingdom of Saudi Arabia;

ii. any entity having or not having legal personality, constituted in accordance with the laws of the Kingdom of Saudi Arabia and having its head office im its territory such as corporations, enterprises, cooperatives, companies, partnerships, offices, establishments, funds, organizations, business associations and other similar entities irrespective of whether or not they are

of limited liability;

iii. the Government of the Kingdom of Saudi Arabia and its financial institutions and authorities such as the Saudi Arabian Monetary Agency, public funds and other similar governmental institutions existing in The Kingdom of Saudi Arabia.

b) in respect of the Republic of the Philippines:

i. individuals who are citizens of the Philippines within the meaning of its Constitution.

ii. legal entities, including companies, associations of companies trading corporate entities and other organizations that are incorporated under the laws of the Philippines.

4. The term "territory" means:

a) in respect of the Kingdom of Saudi Arabia, means in addition to the zones contained within the land boundaries, the marine and submarine zones over which The Kingdom of Saudi Arabia exercises sovereignty and sovereign or jurisdictional rights under international law.

b) in respect of the Republic of the Philippines, the national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial, and aireal domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.

## Article 2.

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

2. Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

## Article 3.

1. Each Contracting Party shall grant investments once admitted and investment returns of the investors of the other Contracting Party a treatment not less favourable than that accorded to investments and investment returns of investors of any third State.

2. In accordance with its laws and regulations, each Contracting Party shall grant investments once admitted and investment returns of the investors of the other Contracting Party a treatment not less favorable than that accorded to investments and investment returns of its investors.

3. Each Contracting Party shall accord the imvestors of the other Contracting Party in connection with the management, maintenance, use, enjoyment or disposal of investments or with the means to assure their rights to such investments like transfers and indemnification or with any other activity associated with this in its territory, treatment not less favourable than the treatment it accords to its investors or to the investors of a third State, whichever is more favourable.

4. The provisions in paragraphs (1), (2) and (3)of this Article shall not, however, relate to privileges granted by either Contracting Party to the investors of a third State by virtue of its membership of, or association with, a customs union, an economic union, a common market or a free trade area.

3. The treatment granted under this Article shall not apply to tax matters.

## Article 4.

1. Investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

2. Investments by investors of either Contracting Party shall not be expropriated, nationalized, or subjected to any other measure, the effects of which would be tantamount to expropnation or nationalization by the other Contracting Party except for the public benefit of that Contracting Party and against prompt, adequate and effective compensation, provided that these measures are not discriminatory and in accordance with domestic laws of general application. Such

compensation shall be equivalent to the value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure has become publicly known.

3. The compensation shall be paid without delay and shall carry a rate of return determined on the basis of the market prevailing rate or return until the time of payment; it shall be effectively realizable and freely transferable. Provision shall have been made in an appropriate manner at or prior to the time of expropriation, nationalization or comparable measure for the determination and payment of such compensation. The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review by due process of law.

4. Investors of either Contracting Party whose investments suffer losses f> in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of general emergency, or revolt, shall be accorded treatment not less favourable by such other Contracting Party than that accorded to its own investors or to the investors of a third state as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

## Article 5.

Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments in connection with investments and investment retums they hold in the territory of the other Contracting Party, in particular;

a) the principal and additional amounts to matmtain or increase the investment;

b) the returns;

c) the repayment of loans;

d) the proceeds from the liquidation or the sale of the whole or any part of the investment;

e) the compensation provided for in Article four.

## Article 6.

If a Contracting Party or any related agency makes a payment to an investor under a guarantee it has assumed in respect of an investment made by that investor in the territory of the other Contracting Party the latter Contracting Party shall recognize the transfer of any rights or claim from the investor or any of its affiliates to the former Contracting Party or any related agency.

## Article 7.

1. Transfers under Articles (4, or 5 or 6) shall be made without delay at the prevailing rate of exchange applicable on the date on which the investor applies for the related transfers.

2. In the absence of a market for foreign exchange, the rate applied will be the most recent applied to inward investments as determined by the users of foreign currency and the monetary authorities or the most recent exchange rate for Conversion of currencies into Special Drawing Rights, whichever is most favorable to the investor.

3. A transfer shall be deemed to have been made "without delay" within the meaning of paragraph (1) if effected within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the relevant request has been submitted and may on no account exceed two months.

## Article 8.

If the treatment accorded by either Contracting Party, according to its laws and regulations, to investments or activities in connection with investments made by investors of the other Contracting Party is more favourable than that provided for in this Agreement, the more favourable treatment shall be accorded.

## Article 9.

This Agreement shall also apply to investments made prior to its entry into force by investors of either Contracting Party in the territory of the other Contracting Party consistent with the latterâs legislation.

## Article 10.

1. Disputes between the Contracting Parties concerning the interpretation or application of the Agreement should as far as possible be amicably settled by the Governments of the two Contracting Parties.

2. If a dispute cannot thus be amicably settled, 1t shall upon the request of elther Contracting Party be submitted to an arbitration tribunal.

3. Such arbitration 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 to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within two months, and such Chairman within three months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.

4. If the periods specified in paragraph (3) above have not been observed, 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. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President should make the necessary appointments.

If the Vice-President is a national of either Contracting Party or if he, too, 1s prevented from discharging the said function, the member of the Court next in seniority who is not a national of either Contracting Party should make the necessary appointments.

5. The arbitration tribunal shall reach its decisions by a majority of votes. Such decisions shall be final and binding. Each Contracting Party shall bear the cost of its own member and the cost of counselling in the arbitration proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitration tribunal may make a different regulation concerning costs. In all other respects, the arbitration tribunal shall determine its own procedure.

## Article 11.

1. Disputes concerning investments between a Contracting Party and investor of the other Contracting Party, in connection with these investments in the territory of the former Contracting Party, should be amicably settled as far as possible.

2. If such disputes 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 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 Investments Disputes established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, of March 18, 1965 done in Washington, D.C.

3. If the dispute is submitted in accordance with paragraph (2) to the competent Court of Law of the Contracting Party, the investor cannot at the same time seek the international arbitration. If the dispute is filed for arbitration the award shall be binding and shall not be subject to any appeal or remedy other than those provided for in the said Convention. The award shall be enforced in accordance with domestic law.

## Article 12.

This Agreement shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

## Article 13.

1. This Agreement shall enter into force on the first day of the following month after the date of the later notification by the Contracting Parties in writing, through diplomatic channels, that their internal legal requirements for the entry into force of the Agreement have been complied with.

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 its 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 Articles 1 to 12 shall remain in force for a further period of twenty (20) years from the date of termination of this Agreement.

Done at Riyadh on 28/8/1426H. corresponding to 2/10/2005 in duplicate in the Arabic, Filipino and English languages, all three texts being equally authentic.

In case of divergence of interpretation of the Filipino and Arabic texts, the English text shall prevail.

For the Government of the Kingdom of Saudi Arabia

Hamad S. Al-Bazai

Deputy Minister of Finance for Economic Affairs

For the Government of the Republic of the Philippines

Armin B. Raquel - Santos

Governor Board of Investments