

AGREEMENT BETWEEN THE REPUBLIC OF TURKEY AND THE REPUBLIC OF THE PHILIPPINES CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Republic of Turkey and the Republic of the Philippines, hereinafter called the Contracting Parties;

Desiring to promote greater economic cooperation between them, particularly with respect to investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the reciprocal promotion and protection of such investments favour the economic prosperity of both Contracting Parties;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement;

1. The term "investor" means:

(i) With respect to the Republic of the Philippines, individuals who are citizens of the Philippines within the meaning of its Constitution,

(ii) With respect to the Republic of Turkey natural persons deriving their status as nationals of Turkey according to its applicable law,

(iii) With respect to both countries, legal entities, namely, companies, associations of companies, trading corporate entities and other organizations that are incorporated or, in any event, are properly organized to actually engage in a business enterprise for profit with headquarters in the territory of that Contracting Party under its laws.

2. The term "investment" means any kind of asset established or acquired in accordance with the respective laws and regulations of either Contracting Party, and more particularly, though not exclusively:

(a) Shares, stocks or any other form of participation in companies,

(b) Returns reinvested, claims to money or any other rights to legitimate performance having financial value related to an investment,

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

(d) Copyrights, industrial and intellectual property rights such as patents, licences, industrial designs, technical processes, trademarks, goodwill, know-how and other similar rights,

(e) Business concessions conferred by law or under contract, including concessions to search for, develop, extract or exploit natural resources on the territory of each Contracting Party as defined hereafter.

3. The term "returns" means the amounts yielded by an investment and includes, in particular, though not exclusively, profit, interest, and dividends.

4. The term "territory" means:

(a) With respect to the Republic of Turkey, territorial sea, as well as the maritime areas over which it has jurisdiction or sovereign rights for the purposes of exploration, exploitation and conservation of natural resources, pursuant to international law.

(b) With respect to the Republic of Philippines, the national territory which 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 aerial 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, from part of the internal waters of the Philippines

Article II. Promotion and Protection of Investments

1. Each Contracting Party shall promote as far as possible investments in its territory by investors of one Contracting Party and shall admit on a basis no less favourable than that accorded in similar situations to investments of any third country in accordance with its Constitution, laws and regulations. Such investments shall be accorded equitable and reasonable treatment.

2. Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and liquidation of such investments.

3. Subject to the laws and regulations of the Contracting Parties relating to the entry, sojourn and employment of aliens:

(a) Nationals of either Contracting Party shall be permitted to enter and remain in the territory of the other Contracting Party for purposes of establishing, developing, administering or advising on the operation of an investment to which they, or an investor of the first Contracting Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources,

(b) Companies which are legally constituted under the applicable laws and regulations of one Contracting Party, and which are investments of the other Contracting Party, shall be permitted to employ top managerial and technical personnel of their choice, regardless of nationality.

4. The provisions of this Article shall have no effect in relation to the following agreements entered into by either of the Contracting Parties:

(a) Relating to any existing or future customs union, common market, free trade area, regional economic organization or similar international agreements of which either Contracting Parties is or may become a member, or

(b) Relating wholly or mainly to taxation.

Article III. Treatment of Investments

(1) Each Contracting Party shall guarantee fair and equitable treatment to investments made by investors of the other Contracting Party on its territory and shall ensure that the exercise of the right thus recognized shall not be hindered in practice.

(2) Each Contracting Party shall accord, once established, investments of the investors of one 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 the most favourable.

Article IV. Expropriation and Compensation

(1) Neither Contracting Party shall take any measure depriving directly or indirectly an investor of the other Contracting Party of an investment, unless the following conditions are complied with:

(a) The measures are taken in the public interest and in accordance with the law;

(b) The measures are not discriminatory; and

(c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation.

(2) The compensation shall be based on the market value of the investments affected, immediately before the measure became public knowledge. In case of delay of the compensation payment, it shall carry an interest at a prevailing rate from the date of expropriation until the date of payment and be freely transferable as described in paragraph 2 Article VI.

(3) The investor affected shall have a right to access, under the law of the Contracting Party making the expropriation, to the judicial authority of that Contracting Party, in order to review the amount of compensation and the legality of any such

expropriation or comparable measures.

Article V. Losses

Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party, owing to war, insurrection, civil disturbance or other similar events, shall be accorded by such other Contracting Party treatment no less favourable than that accorded to its own investors or to investors of any third country, whichever is the most favourable treatment, as regards any measure it adopts in relation to such losses.

Article VI. Repatriation and Transfer

1. Each Contracting Party shall permit in good faith all transfers related to an investment to be made freely and without delay into and out of its territory. Such transfers include:

(a) Interests, dividends, profits, reimbursements deriving from loans and other similar returns in connection with investments.

(b) Proceeds from the sale or liquidation of all or any part of an investment,

(c) Compensation pursuant to Article III,

(d) Salaries, wages and other remunerations received by the nationals of one Contracting Party who have obtained in the territory of the other Contracting Party the corresponding work permits relative to an investment,

(e) Payments arising from an investment dispute.

2. Transfers shall be made in a freely convertible currency at the rate of exchange in force at the date of transfer in accordance with laws and regulations of the Contracting Party which admitted the investment.

Article VII. Subrogation

1. If the investment of an investor of one Contracting Party is insured against non-commercial risks under a system established by law, any subrogation of the insurer, arising out of the terms of the insurance agreement shall be recognized by the other Contracting Party.

2. The insurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.

3. Disputes between a Contracting Party and an insurer shall be settled in accordance with the provisions of Article VIII of this Agreement.

Article VIII. Settlement of Disputes between One Contracting Party and Investors of the other Contracting Party

1. With a view to an amicable solution of disputes, which arise within the terms of this Agreement between a Contracting Party and an investor of the other Contracting Party, consultations will take place between the Contracting Parties concerned.

2. If these consultations do not result in a solution within three months from the date of request for settlement, the investor may submit the dispute 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 Settlement of Investment Disputes Between States and Nationals of Other States", opened for signature at Washington D.C. on March 18, 1965.

3. Once the investor has submitted the dispute to the competent tribunal of the Contracting Party in whose territory the investment was made or to international arbitration, that election shall be final.

4. The arbitration decision shall be final and binding on both parties and shall be enforced in accordance with the laws of the Contracting Party in whose territory the investment was made.

5. Once a dispute has been submitted to the competent tribunal or international arbitration in accordance with this Article, neither Contracting Party shall pursue the dispute through diplomatic channels unless the other Contracting Party has failed to abide or comply with any judgment, award, order or other determination made by the competent international or local tribunal in question.

Article IX. Settlement of Disputes between the Contracting Parties

1. The Contracting Parties shall seek in good faith and a spirit of cooperation a rapid and equitable solution to any dispute between them concerning the interpretation or application of this Agreement. In this regard, the Contracting Parties agree to engage in direct and meaningful negotiations to arrive at such solutions. If the Contracting Parties cannot reach an agreement within six months after the beginning of disputes between themselves through the foregoing procedure, the disputes may be submitted, upon the request of either Contracting Party, to an arbitral tribunal.

2. Within two months upon receipt of a request, each Contracting Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman, who is a national of a third State. In the event either Contracting Party fails to appoint an arbitrator within the specified two months time, the other Contracting Party may request the President of the International Court of Justice to make the appointment.

3. If both arbitrators cannot reach an agreement about the choice of the Chairman who should be a national of a third country which has diplomatic relations with both Contracting Parties, within two months after their appointment, the Chairman shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

4. If, in the cases specified under paragraphs (2) and (3) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the Vice-President is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the most senior member of the Court who is not a national of either Contracting Party.

5. The tribunal shall have three months from the date of the selection of the Chairman to agree upon rules of procedure consistent with the other provisions of this Agreement. In the absence of such agreement, the tribunal shall request the President of the International Court of Justice to designate rules of procedure, taking into account generally recognized rules of international arbitral procedure.

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. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within eight months of the date of selection of the Chairman, and the tribunal shall render its decision within two months after the date of the final submissions or the date of the closing of the hearings, whichever is later. The arbitral tribunal shall reach its decisions, which shall be final and binding, by a majority of votes.

8. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceedings shall be paid for equally by the Contracting Parties. The tribunal may, however, at its discretion, decide that a higher proportion of the costs be paid by one of the Contracting Parties.

9. A dispute shall not be submitted to an international arbitration court under the provisions of this Article, if the same dispute has been brought before another international arbitration court under the provisions of Article VIII and is still pending before said court. This will not impair the engagement in direct and meaningful negotiations between both Contracting Parties.

Article X. Entry Into Force

1. This Agreement shall enter into force on the date on which the exchange of instruments of ratification has been completed. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 2 of this Article. It shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter.

2. Either Contracting Party may, by giving one year's written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten year period or at any time thereafter.

3. This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force when each Contracting Party has notified the other that it has completed all internal requirements for entry into force of such amendment.

4. With respect to investments made or acquired prior to the date of termination of this Agreement and to which this Agreement otherwise applies, the provisions of all of the other Articles of this Agreement shall thereafter continue to be effective for a further period of ten years from such date of termination.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Agreement.

DONE at Manila on the day of 22nd February 1999 in the English language.

FOR THE REPUBLIC OF TURKEY

FOR THE REPUBLIC OF THE PHILLIPPINES