

Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Republic of the Philippines for the Promotion and Protection of Investments

PHILIPPINES

Treaty Series No. 7 (1981)

London, 3 December 1980

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Presented to Parliament by the Secretary of State for Foreign and Commonwealth Affairs by Command of Her Majesty February 1981

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AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE REPUBLIC OF THE PHILIPPINES FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of the Philippines, hereinafter referred to as the Contracting Parties;

Taking note of their existing friendly relations;

Desiring to create favourable conditions for greater investment by nationals and companies of one Contracting Party in the territory of the other Contracting Party, and to increase prosperity in their respective territories;

Recognising that agreement on the promotion and protection of such investment will contribute to the furtherance of such purposes;

Have agreed as follows:

Article I.

For the purposes of this Agreement:

1. (a) The term "Republic of the Philippines" shall refer to the entity as constituted at present, whose territory is that defined in this Article.

(b) The term "United Kingdom of Great Britain and Northern Ireland" shall refer to the entity as constituted at present, whose territory is that defined in this Article.

2. The term "territory" means:

(a) In respect of the Republic of the Philippines, the territory defined in Article I of its Constitution.

(b) In respect of the United Kingdom of Great Britain and Northern Ireland, the territory of Great Britain and Northern Ireland, and those territories for whose international relations the Government of the United Kingdom are responsible and with respect to which the Contracting Parties agree to extend the provisions of this Agreement by an exchange of notes.

3. The term "nationals" shall mean:

(a) In respect of the Republic of the Philippines, its citizens within the meaning of Article III of its Constitution.

(b) In respect of the United Kingdom of Great Britain and Northern Ireland, any citizen of the United Kingdom and Colonies, and any British subject not possessing that citizenship or the citizenship of any other Commonwealth country or territory, provided that in every case he has the right of abode in the United Kingdom.

4. The term "company" of a Contracting Party shall mean a corporation, partnership or other association, 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 the grounds of the need to maintain public order, to protect essential security interests or to fulfil commitments relating to international peace and security.

5. The term "investment" shall mean every kind of asset and in particular, though not exclusively, includes:

(i) Movable and immovable property and any other property rights such as mortgages, liens and pledges;

(ii) Shares, stocks and debentures of companies or interests in the property of such companies;

(iii) Claims to money or to any performance under contract having a financial value;

(iv) Intellectual property rights and goodwill;

(v) Business concessions conferred by law or under contract.

6. The term "earnings" shall mean amounts yielded by an investment, particularly, though not exclusively, profits, interest, capital gains, dividends, royalties or fees.

Article II.

1. This Agreement shall apply only to investments brought into, derived from or directly connected with investments brought into the territory of one Contracting Party by nationals or companies of the other Contracting Party which are qualified for registration and are duly registered by the appropriate government agency of the receiving Contracting Party, if so required by its laws.

2. This Agreement shall not affect the rights and obligations of the Contracting Parties with respect to investments which under the provisions of paragraph 1 are not within the scope of the Agreement.

Article III.

1. Each Contracting Party shall encourage and create favourable conditions for investments, consistent with its national objectives, by companies or nationals of the other Contracting Party, subject to the laws and regulations of the Party in whose territory the investment is made, including rules on registration and valuation of such investments, if any.

2. Investments of nationals or companies of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

3. Each Contracting Party shall observe any obligation arising from a particular commitment it may have entered into with regard to a specific investment of nationals or companies of the other Contracting Party.

Article IV.

1. Each Contracting Party shall extend to investments in its territory of companies or nationals of the other Contracting Party treatment no less favourable than that granted to nationals and companies of any third state.

2. Each Contracting Party shall not subject nationals or companies of the other Contracting Party in its territory, as regards their management, use, enjoyment, or disposal of their investments, to unreasonable measures or treatment less favourable than that which it accords to nationals or companies of any third state.

3. The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals or companies of any third state shall not be construed as to oblige one Contracting Party to extend to the nationals or companies 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 organisation of which either Contracting Party is or may become a member, or

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

Article V.

1. Investments of nationals or companies of either Contracting Party shall not be subject to expropriation or nationalisation or any measure equivalent thereto (in this article referred to as "expropriation"), except for public use, in the public interest, or in the interest of national defence and upon payment of just compensation. Such compensation shall amount to the market value of the investments expropriated, or, in the absence of a determinable market value, the actual loss sustained, on or immediately before the date of expropriation. The compensation shall be made without undue delay, shall be effectively realisable and, subject to the provisions of paragraph 3 of Article VII, shall be freely transferable. The national or company affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review by a judicial body, or, if such exists, by 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 this paragraph.

2. 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 nationals or companies of the other Contracting Party own shares, it shall apply the provisions of paragraph 1 of this Article so as to ensure the compensation provided for in that paragraph to such nationals or companies to the extent of their interest in the assets expropriated.

Article VI.

If a Contracting Party makes restitution, indemnification, compensation or other settlement for losses suffered owing to war or other armed conflicts, revolution, a state of national emergency, revolt, insurrection or riot in the territory of such Contracting Party, it shall accord to the nationals or companies of the other Contracting Party whose investments in the territory of the Contracting Party have suffered such losses, treatment no less favourable than that which the Contracting Party shall accord to companies or to nationals of any third state.

Article VII.

1. Each Contracting Party shall in respect of investments permit nationals or companies of the other Contracting Party the free transfer of their capital and of the earnings from it, subject to the right of the former Contracting Party to impose equitably and in good faith such measures as may be necessary to safeguard the integrity and independence of its currency, its external financial position and balance of payments, consistent with its rights and obligations as a member of the International Monetary Fund.

2. The exchange rate applicable to such transfer shall be the rate of exchange prevailing at the time of remittance.

3. In cases where large amounts of compensation have been paid in pursuance of Article V the Contracting Party concerned may require the transfer thereof to be effected in reasonable instalments.

Article VIII.

1. If either Contracting Party makes payment under an insurance or guarantee agreement with its own nationals or companies in respect of an investment or any part thereof in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment of any right or claim arising from the indemnity paid, by the party indemnified to the former Contracting Party, and that the former Contracting Party is entitled by virtue of subrogation to exercise the rights and assert the claims of such nationals or companies. This does not necessarily imply, however, a recognition on the part of the latter Contracting Party of the merits of any case or the amount of any claim arising therefrom.

2. If the former Contracting Party acquires amounts in the lawful currency of the other Contracting Party or credits thereof by assignment under the terms of an indemnity, the former Contracting Party shall be accorded in respect thereof treatment not less favourable than that accorded to the funds of a private investor deriving from activities and transactions similar to those in which the party indemnified was engaged but subject to those limitations or conditions, if any, that are applicable to the party indemnified. Such amounts and credits shall be freely available to the former Contracting Party concerned for the purpose of meeting its official expenditure in the territory of the other Contracting Party.

Article IX.

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

Article X.

1. The Contracting Party in the territory of which a national or company of the other Contracting Party makes or intends to make an investment shall assent to any request on the part of such national or company to submit, for conciliation or arbitration, to the Centre established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18 March 1965(1) any dispute that may arise in connection with the investment.

2. A company which is incorporated or constituted under the law in force in the territory of one Contracting Party and in which before such a dispute arises the majority of shares are owned by nationals or companies of the other Contracting Party shall in accordance with Article 25 (2) (b) of the Convention be treated for the purposes of the Convention as a company of the other Contracting Party.

Article XI.

1. Any dispute between the Contracting Parties as to the interpretation or application of the present Agreement, not satisfactorily resolved through diplomatic channels or other amicable means, shall be submitted, at the request of either Party to a panel of arbitrators for decision in accordance with the provisions of this Agreement and the applicable principles in international law.

2. The panel shall be composed of three members, one selected by each Party within one month of receipt of the request for arbitration, and the third to be chosen by the members thus selected by the Parties within two months from the designation of the second member.

3. If within the periods specified in paragraph 2 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the Secretary-General of the United Nations to make any necessary appointments. If the Secretary-General is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the President of the International Court of Justice shall be invited to make the necessary appointments. If the President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Vice-President or 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.

4. The panel of arbitrators shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. The panel shall determine its own procedure.

5. Each Contracting Party shall bear the cost of its own member of the panel 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.

Article XII.

1. This Agreement shall enter into force on the 30th day following its signature.(2)

2. This Agreement shall remain in force for a period of ten years from its entry into force and shall thereafter continue in force unless terminated by either Contracting Party by not less than six months' written notice through diplomatic channels; provided that in respect of investments made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of ten years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

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

Done at London this 3rd day of December 1980 in two original copies, each in the English and Filipino languages, each text being equally authentic.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

P. A. R. BLAKER

For the Government of the Republic of the Philippines:

CESAR VIRATA

(1) Treaty Series 25 (1967) Cmd. 3255.

(2) 2 January 1981.