

Agreement between the Kingdom of the Netherlands and the Republic of the Philippines for the Promotion and Protection of Investments

The Government of the Kingdom of the Netherlands and the Government of the Republic of the Philippines

Desiring to strengthen the traditional ties of friendship between their countries, to extend and intensify their economic relations, and to encourage investments on the basis of equality and to the mutual benefit of both countries,

Have agreed as follows:

Article 1.

For purposes of this Agreement:

(a) The term "territory" means:

- (i) With respect to the Republic of the Philippines, the territory denoted in Article 1 of its Constitution;
- (ii) With respect to the Kingdom of the Netherlands, the territory which constitutes the Kingdom of the Netherlands.

It includes the maritime areas adjacent to the coast of the Contracting Party concerned, to the extent to which that Party may exercise sovereign rights or jurisdiction in those areas according to international law.

(b) The term "nationals" shall comprise, with regard to a particular Contracting Party, of:

- (i) Natural persons having the nationality of that Contracting Party in accordance with its laws;
- (ii) Without prejudice to the provisions of (iii) hereafter, legal persons constituted in accordance with the law of that Contracting Party 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;
- (iii) Legal persons controlled, directly or indirectly, by nationals of that Contracting Party but constituted in accordance with the law of the other Contracting Party.

(c) The term "investment" shall comprise every kind of asset of lawful commerce and more particularly, though not exclusively, includes:

- (i) Movable and immovable property as well as any other property rights such as mortgages, liens, and pledges;
- (ii) Shares, stocks, and debentures or any interest in the property of nationals;
- (iii) Claims to money or to any performance having a financial value;
- (iv) Intellectual and industrial property rights, technical processes, know-how and goodwill;
- (v) Business concessions conferred by law or under contract in accordance with or pursuant to law.

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

Article 2.

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 of the other Contracting Party in conformity with the former Party's

laws and regulations, including due registration with the appropriate agencies of the receiving Contracting Party, if so required by its laws.

Article 3.

1. Each Contracting Party shall encourage and create favourable conditions for investments, consistent with its national objectives, of 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 valuations of such investments, if any.
2. Investments of nationals of either Contracting Party shall, in their entry, operation, management, maintenance, use, enjoyment or disposal, 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 of the other Contracting Party.

Article 4.

1. Each Contracting Party shall extend to investments, in its territory, of nationals of the other Contracting Party treatment no less favourable than that granted to investments of nationals of any third State.
2. The provisions of this Agreement relative to the grant of treatment no less favourable than that accorded to investments of nationals of any third State shall not be construed as to oblige one Contracting Party to extend to the nationals of the other Contracting Party 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 of which either Contracting Party is or may become a member;
 - (b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation;
 - (c) Membership in the Association of Southeast Asian Nations (ASEAN), with respect to the Republic of the Philippines.

Article 5.

Investments or earnings of nationals of either Contracting Party shall not be subject to expropriation or nationalization or any measure equivalent thereto in this article, all such measures are hereafter referred to as "expropriation", except for public use, in the public interest, or in the interest of national defense and upon payment of just compensation. Such compensation shall amount to the market value of the investment 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 realizable and, subject to the provision of paragraph 3, Article 7, shall be freely transferable in a freely convertible currency to the country designated by the national affected. The national 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 another independent authority of that Party of his case and of the valuation of his investment in accordance with the principles set out in this paragraph.

Article 6.

If an investment of a national of one Contracting Party is insured or guaranteed against non-commercial risks under a system established by law, any subrogation of the insurer or guarantor or re-insurer into the rights of the said national pursuant to the terms of such insurance or guarantee shall be recognized by the other Contracting Party. 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.

Article 7.

1. Each Contracting Party shall in respect of investments permit nationals of the other Contracting Party the unrestricted transfer in freely convertible currency of their investments and of the earnings from it to the country designated by those nationals, 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 5 the Contracting Party concerned may require the transfer thereof to be effected in reasonable instalments.

Article 8.

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 9.

1. The Contracting Party in the territory of which a national of the other Contracting Party makes or intends to make an investment shall assent to any request on the part of such national 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 any dispute that may arise in connection with the investment.

2. A national 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 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 national of the other Contracting Party.

Article 10.

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 of 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 11.

As regards the Kingdom of the Netherlands the present Agreement shall apply to the part of the Kingdom in Europe only.

Article 12.

1. The present Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have informed each other in writing that the procedures constitutionally required therefor in their respective countries have been complied with, and shall remain in force for a period of 5 years.

2. Unless notice of termination has been given by either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for periods of 5 years, each Contracting Party reserving the

right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.

3. Any such termination shall have no effect on the fulfillment of contracts made under the provisions of the present Agreement.

4. With respect to investments made before the date of termination of the present Agreement the foregoing Articles thereof shall continue to be effective for a further period of 15 years from that date.

IN WITNESS WHEREOF, the undersigned representatives, duly authorized thereto, have signed the present Agreement.

DONE in duplicate at Manila in the English language, on this 27th day of February 1985.

For the Government of the Kingdom of the Netherlands

For the Government of the Republic of the Philippines