

Treaty between the Federal Republic of Germany and the Republic of the Philippines concerning the Promotion and Protection of Investments

THE FEDERAL REPUBLIC OF GERMANY

and

THE REPUBLIC OF THE PHILIPPINES

DESIRING to intensify economic cooperation between both States,

INTENDING to create favourable conditions for investments by nationals and companies of either State in the territory of the other State, and

RECOGNIZING that contractual protection of such investments will stimulate private business initiative and increase the prosperity of both nations,

HAVE AGREED AS FOLLOWS:

Article 1.

Each Contracting Party shall in its territory promote as far as possible investments of nationals or companies of the other Contracting Party and shall endeavour to admit such investments in accordance with its constitution, laws and regulations. It shall accord such investments fair and equitable treatment.

Article 2.

(1) Investments owned by, or under the effective control of, nationals or companies of either Contracting Party in the territory of the other Contracting Party shall not be accorded by that party treatment less favourable than it accords to any other similar investment in its territory.

(2) Neither Contracting Party shall subject activities of nationals or companies of the other Contracting Party in connection with their investments, as well as the management, use or enjoyment of such investments, to conditions less favourable than it imposes on activities in connection with any other similar investment in its territory.

Article 3.

(1) Investments of nationals or companies of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

(2) The investments of nationals or companies of either Contracting Party in the territory of the other Contracting Party shall not be expropriated except for the public benefit and against compensation. Such compensation shall represent the equivalent of the investment affected at the time of expropriation; it shall be actually realizable, freely transferable, and shall be made without delay.

Adequate provision shall have been made at or prior to the time of the deprivation for the determination and the giving of such compensation. The legality of any such deprivation and the amount of compensation shall be subject to review by due process of law.

(3) Nationals or companies of either Contracting Party who owing to war or other armed conflict, revolution or revolt in the territory of the other Contracting Party suffer the loss of investments situated there, shall be accorded treatment no less favourable by such other Contracting Party than that party accords to any other similar investment in its territory as regards

restitution, indemnification, compensation or other valuable consideration. With respect to the transfer of such payments each Contracting Party shall accord to the requests of nationals or companies of the other Contracting Party a treatment no less favourable than is accorded to comparable requests made by nationals or companies of any third State.

(4) The provisions of paragraphs (1), (2) and (3) above shall likewise apply to returns from investments.

(5) The nationals and companies of either Contracting Party shall enjoy most-favoured nation treatment in the territory of the other Contracting Party in respect of the matters provided for in the present Article.

Article 4.

Either Contracting Party shall guarantee to the nationals or companies of the other Contracting Party the transfer of the capital, of the returns from it and, in the event of liquidation, of the net proceeds from such liquidation.

Article 5.

If a claim arising out of a guarantee given for an investment is asserted against a Contracting Party, the latter shall, without prejudice to its rights under Article 10, be authorized on the conditions stipulated by its predecessor in title to exercise the rights having been assigned to such party by law or having been ceded to it by the predecessor in title (devolved interest). As regards the transfer of payments to be made by virtue of the devolved interest to the Contracting Party concerned, paragraphs (2), (4) and (5) of Article 3 as well as Article 4 shall apply mutatis mutandis.

Article 6.

(1) To the extent that those concerned have not made another arrangement admitted by the appropriate agencies of the Contracting Party in whose territory the investment is situated, transfers under paragraphs (2), (3) or (4) of Article 3, under Article 4 or Article 5 shall be made without delay and at the rate of exchange effective for current transactions on the day the transfer is made.

(2) The rate of exchange effective for current transactions shall be based on the par value agreed with the International Monetary Fund and shall lie within the margins above or below the parity admitted under Section 3 of Article IV of the Articles of Agreement on the International Monetary Fund.

(3) If at the date of transfer no rate of exchange within the meaning of paragraph (2) above exists in respect of the Contracting Party concerned, the official rate fixed by such Contracting Party for its currency in relation to the US dollar or to another freely convertible currency or to gold shall be applied. If no such rate has been fixed, the appropriate agencies of the Contracting Party in whose territory the capital is invested shall admit a rate of exchange that is fair and equitable.

Article 7.

If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties in addition to the present Treaty result in a position entitling investments of nationals or companies of the other Contracting Party to a treatment more favourable than is provided for by the present Treaty, such position shall not be affected by the present Treaty. Either Contracting Party shall observe any other obligation it may have entered into with regard to investments within its territory by nationals or companies of the other Contracting Party.

Article 8.

(1) The term "investment" shall comprise every kind of asset, and more particularly, 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 or other kinds of interest in companies;
- c) titles to money or to any performance having an economic value;
- d) copyrights, industrial property rights, technical processes, trade-names, and goodwill;
- e) business concessions under public law

Any alteration of the form in which assets are invested shall not affect their classification as investment, provided that such

alteration is not contrary to the admission, if any, granted in respect of the assets originally invested

(2) The term "returns" shall mean the amounts yielded by an investment as net profit or interest for a specific period

(3) The term "nationals" shall mean

a) in respect of the Federal Republic of Germany: Germans within the meaning of the Basic Law for the Federal Republic of Germany;

b) in respect of the Republic of the Philippines: citizens of the Philippines within the meaning of Article IV of the Constitution of the Republic of the Philippines

(4) The term "companies" shall mean

a) in respect of the Federal Republic of Germany: any juristic person as well as any commercial or other company or association with or without legal personality, having its seat in the territory of the Federal Republic of Germany and lawfully existing consistent with legal provisions, irrespective of whether the liability of its partners, associates or members is limited or unlimited and whether or not its activities are directed at profit;

b) in respect of the Republic of the Philippines: any juristic person as well as any commercial or other company or association with or without legal personality, having its seat in the territory of the Republic of the Philippines and lawfully existing consistent with legal provisions, irrespective of whether the liability of its partners, associates or members is limited or unlimited and whether or not its activities are directed at profit

Article 9.

The present Treaty shall also apply to investments made prior to its entry into force by nationals or companies of either Contracting Party in the territory of the other Contracting Party in accordance with the latter's legislation. This provision shall not affect the Agreement of 27 February 1953 on German External Debts.

Article 10.

(1) Disputes concerning the interpretation or application of the present Treaty should, if possible, be settled by the Governments of the two Contracting Parties.

(2) If a dispute cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such arbitral tribunal shall be constituted for each individual case as follows: each Contracting Party appointing one member, and these two members shall then 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, after either Contracting Party has made known to the other Contracting Party that it wants the dispute to be submitted to an arbitral tribunal.

(4) If the periods specified in paragraph (3) have not been 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 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, is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party should make the necessary appointments.

(5) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding. Each Contracting Party shall bear the cost of its own member and of its counsel in the arbitral proceedings; the fee of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal may make a different regulation concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 11.

The provisions of the present Treaty shall remain in force also in the event of any conflict arising between the Contracting Parties, without prejudice to the right of taking such temporary measures as are permitted under the general rules of international law. Measures of this kind shall cease to exist not later than on the date of the actual termination of the conflict, irrespective of whether or not diplomatic relations have been re-established.

Article 12.

With the exception of the provisions in Number 10 of the Protocol, referring to air transport, the present Treaty shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Republic of the Philippines within three months from the entry into force of the present Treaty.

Article 13.

(1) The present Treaty shall be ratified, and the instruments of ratification shall be exchanged as soon as possible in Bonn.

(2) The present Treaty shall enter into force one month after the day of exchange of the instruments of ratification. It shall remain in force for a period of five years, and shall continue in force thereafter for an unlimited period except if denounced in writing by either Contracting Party one year before its expiration. After the expiry of the period of five years, the present Treaty may be denounced at any time by either Contracting Party upon giving one year's notice.

(3) In respect of investments made prior to the date of termination of the present Treaty, the provisions of Articles 1 to 12 shall continue to be effective for a further period of twenty years from the date of termination of the present Treaty.

DONE at Manila on this Third day of March, Nineteen Hundred and Sixty-Four, in four originals, two each in the German and English languages, all four texts being equally authentic.

For the Federal Republic of Germany:

Franz Ferring

Chargé d'Affaires a.i. of the Federal Republic of Germany

Dr. Kurt Daniel

Ministerialdirigent in the Federal Ministry of Economic Affairs and Chairman of the German Delegation

For the Republic of the Philippines:

Librado D. Cayco

Acting Secretary of Foreign Affairs of the Republic of the Philippines

Protocol

On signing the Treaty concerning the Promotion and Protection of Investments, concluded between the Federal Republic of Germany and the Republic of the Philippines, the undersigned plenipotentiaries have, in addition, agreed on the following provisions which should be regarded as an integral part of the said Treaty:

(1) To Article 1

Investments made in accordance with the present Treaty and the laws and regulations of either Contracting Party within the area of application of that party's legal system by nationals or companies of the other Contracting Party, shall enjoy the full protection of the present Treaty.

(2) To Articles 1 and 2

Either Contracting Party reserves the right to require as a prerequisite to the admission of an investment within its territory a "certificate of admission" which it shall issue to investments it considers admissible pursuant to Article 1. Such certificate of admission may specify favours, immunities, and conditions deviating from Article 2 which the admitting party grants or imposes in respect of the investment concerned. Such deviations shall only be effective if the deviating measures have been described in detail and laid down individually in the certificate of admission. The provisions of Article 2 shall to that extent not be applicable. It shall be understood that neither Contracting Party may specify conditions deviating from the other provisions of the Treaty.

(3) To Article 2

(a) Nothing in Article 2 shall be construed to entitle nationals or companies of the Federal Republic of Germany to the special rights and privileges accorded by the Republic of the Philippines to nationals and companies of the United States of America by virtue of existing agreements. Neither shall Article 2 be construed to entitle nationals or companies of the Federal Republic of Germany to any special right or privilege reserved by Article XIII, Section 1 and Article XIV, Section 8 of the Constitution of the Republic of the Philippines to citizens, corporations, associations or entities of the Republic of the Philippines.

(b) To paragraph 1

Either Contracting Party reserves the right not to recognize investments as within the meaning of "control" where the control was transferred to a national or company of the other Contracting Party for the purpose of enabling a national or company of a third State to obtain the privileges granted by the present Treaty.

(c) To paragraph 2

aa) The following shall more particularly, though not exclusively, be deemed "activity" within the meaning of paragraph 2 of Article 2: the purchase of raw or auxiliary materials, of power or fuel, or of means of production or operation of any kind, the marketing of products inside or outside the country. Without prejudice to the right of either Contracting Party to deviate from Article 2 as provided for in Protocol Number 2, if the following measures are not applied under the same circumstances to any other similar investment in the territory of the Contracting Party concerned, such measures shall be deemed "conditions less favourable" within the meaning of paragraph 2 of Article 2: any restriction or impeding of the activities referred to in paragraph 2 of Article 2 or of the use, management or enjoyment of an investment as well as any measure having similar effects. Measures that have to be taken for reasons of public security and order, public health or morality shall not be deemed "conditions less favourable".

bb) Paragraph 2 of Article 2 shall not apply to entry, sojourn, and activity as an employee.

(4) To Article 2 and paragraph 3 of Article 3

The term "any other similar investment" as referred to in Article 2 and paragraph 3 of Article 3 shall be deemed to comprise any investment of a like nature in the territory of the Contracting Party concerned regardless of whether such investments have been made by nationals or companies of any third State or by any other individual or company.

(5) To Article 3

(a) Expropriation shall mean the taking in whole or in part of any investment as well as the restricting of any investment the effect of which is tantamount to such taking.

(b) The provisions of paragraph 2 of Article 3 shall also apply to the transfer of an investment to public ownership as well as to the subjection of an investment to public control or to similar interventions by public authorities the effect of which is tantamount to expropriation as defined in paragraph (a) above.

(c) Neither Contracting Party shall, in expropriating an investment, subject nationals or companies of the other Contracting Party to treatment less favourable than it imposes on its own nationals or companies.

(6) To Article 4

"Liquidation" within the meaning of Article 4 shall be deemed to include any disposal effected for the purpose of completely or partly giving up the investment concerned.

(7) To Article 6

(a) A transfer shall be deemed to have been made "without delay" within the meaning of paragraph 1 of Article 6 if made 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 one year in respect of transfer of capital or liquidation proceeds as referred to in Article 4, and six months in respect of all other transfers.

(b) If at the time of transfer a Contracting Party applies to current transactions a rate of exchange other than that referred to in paragraph 2 of Article 6 that has been expressly or tacitly approved by the International Monetary Fund such rate of exchange shall be applicable in the place of the rate of exchange referred to in paragraphs 2 and 3 of Article 6.

(8) To Article 8

(a) Returns from an investment as well as returns from re-invested returns shall enjoy the same protection as the original investment.

(b) Without prejudice to any other method of determining nationality, any person in possession of a national passport issued by the appropriate authorities of either Contracting Party shall be deemed to be a national of that party.

(9) To Article 10

Nothing in Article 10 shall be construed to preclude nationals or companies of either Contracting Party from seeking relief in the local courts.

(10) Either Contracting Party shall refrain from any measures which, contrary to the principles of free competition, may prevent or hinder sea-going vessels or aircraft of the other Contracting Party from participating in the transport of goods intended for, or of persons travelling in connection with, an investment within the meaning of the present Treaty. This also applies to goods acquired in the territory of either Contracting Party or of any third State with funds of an enterprise in which capital within the meaning of the present Treaty is invested; it applies furthermore to persons travelling on behalf of such an enterprise.

DONE at Manila on this Third day of March Nineteen Hundred and Sixty-Four, in four originals, two each in the German and English languages, all four texts being equally authentic.

For the Federal Republic of Germany:

Franz F e r r i n g

Chargé d'Affaires a . i . of the Federal Republic of Germany

Dr. Kurt Daniel

Ministerialdirigent in the Federal Ministry of Economic Affairs and Chairman of the German Delegation

For the Republic of the Philippines:

Librado D. Cayco

Acting Secretary of Foreign Affairs of the Republic of the Philippines

Exchange of Letters

Manila, March 3, 1964

Mr. Chairman,

With reference to the Treaty between the Republic of the Philippines and the Federal Republic of Germany concerning the Promotion and Protection of Investments signed today, I have the honour to inform you that the following understanding has been reached in the course of our negotiations:

For the purpose of promoting investments by German nationals or companies in the territory of the Republic of the Philippines, the Republic of the Philippines will grant in accordance with its laws the necessary permits to German nationals whose training or experience is specially required by an investment and who desire to enter and stay in the Republic of the Philippines to carry on activities in connection with such investment, except as reasons of public order and security, of public health or morality may warrant otherwise.

I should be grateful if you could kindly confirm the understanding set out above.

Accept, Mr. Chairman, the assurances of my highest consideration.

Melchor P. Aquino

Chairman of the Philippine Delegation

The Chairman of the German Delegation

Ministerialdirigent Dr. Kurt Daniel

Manila

The Chairman of the German Delegation

Manila, March 3, 1964

Mr. Chairman,

I have the honour to acknowledge receipt of your letter dated March 3, 1964, which reads as follows:

"With reference to the Treaty between the Republic of the Philippines and the Federal Republic of Germany concerning the Promotion and Protection of Investments signed today, I have the honour to inform you that the following understanding has been reached in the course of our negotiations:

For the purpose of promoting investments by German nationals or companies in the territory of the Republic of the Philippines, the Republic of the Philippines will grant in accordance with its laws the necessary permits to German nationals whose training or experience is specially required by an investment and who desire to enter and stay in the Republic of the Philippines to carry on activities in connection with such investment, except as reasons of public order and security, of public health or morality may warrant otherwise.

I should be grateful if you could kindly confirm the understanding set out above."

I have the honour to confirm the understanding set out above.

Accept, Mr. Chairman, the assurance of my highest consideration.

Dr. Kurt Daniel

The Chairman of the Philippine Delegation

H. E. Ambassador Melchor P. Aquino

Manila