AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES CONCERNING ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the People's Republic of China and the Government of the Republic of the Philippines (hereinafter referred to as the Contracting Parties).

Desiring to encourage, protect and create favorable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party based on the principles of mutual respect for sovereignty, equality and mutual benefit and for the purpose of the development of economic cooperation between both States.

Have agreed as follows:

Article 1.

For the purpose of this Agreement,

(a) The term "invesments" means any kind of asset made as an investment in accordance with the laws and regulations of the Contracting Party accepting the investment in its territory, including mainly:

i) Movable and immovable property and other property rights;

ii) Shares in companies or other forms of interest in such companies;

iii) Claims to money or to any performance having an economic value;

iv) Copyrights, industrial property, know-how and technological process;

v) Concessions conferred by law, including concessions to search for or exploit natural resources.

(b) The term "investors" means:

In respect of the People's Republic of China:

i) Natural persons who have nationality of the People's Republic of China;

ii) Economic entities established in accordance with the laws of the People's Republic of China and domiciled in the territory of the People's Republic of China;

In respect of the Republic of the Philippines:

i) Citizens of the Philippines within the meaning of Article iv of its Constitution;Article iv of its Constitution;

ii) Companies which may be corporations, partnerships or other associations, incorporated or constituted and actually doing business under the laws in force in any part of the territory of the Philippines 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 interest or to fulfill commitments relating to international peace and security.

(c) The term "returns" means the amount yielded by an investment, such as profits, dividends, interests, royalties or other legitimate income.

Article 2.

1. Each Contacting Party shall encourage investors of the other Contracting party to make investments in its territory and admit such investments in accordance with its laws and regulations.

2. Each Contracting Party shall grant assistance and provide facilities in accordance with its existing laws for obtaining visa and working permit to nationals of the other Contracting Party to or in the territory of the former in connection with the activities associated with such investments.

Article 3.

1. Investments and activities associated with such investments of investors of either Contracting Party shall be accorded equitable treatment and shall enjoy protection in the territory of the other Contracting Party.

2. The treatment and protection referred to in paragraph 1 of this Article shall not be less favorable than that accorded to investments and activities associated with such investments of investors of a third State.

3. The treatment and protection as mentioned in paragraphs 1 and 2 of this Article shall not include any preferential treatment accorded by the other Contracting Party to investments of investors of a third State based on customs union, free trade zone, economic union, or other advantages accorded by either Contracting Party resulting from its association in a regional or sub-regional arrangement, or measures leading to the formation of a customs union or a free trade area, or agreement relating to the avoidance of double taxation or for facilitating frontier trade.

Article 4.

1. Either Contracting Party may, for reasons of national security and public interest, expropriate, nationalize or take similar measures (hereinafter referred to as "expropriation") against investments of investors of the other Contracting Party in its territory, but the following conditions shall be met:

a) Under domestic legal procedure;

b) Without discrimination;

c) Upon payment of fair and reasonable compensation.

2. The compensation mentioned in paragraph 1 (c) of this Article shall be equivalent to the value of the expropriated investments at the time when expropriation is proclaimed, be convertible and freely transferable. The compensation shall be paid without unreasonable delay.

3. If an investor considers the expropriation mentioned in Paragraph 1 of this Article incompatible with the laws of the Contracting Party taking such expropriation, the competent court of the Contracting Party shall, upon the request of the investor, review the said expropriation.

4. Investors of one Contracting Party who suffer losses with regard to their investments in the territory of the other Contracting Party owing to war, a state of national emergency, insurrection, riot or other similar events, shall be accorded by the latter Contracting Party, if it takes relevant measures, treatment no less favorable than that accorded to investors of a third State.

Article 5.

Each Contracting Party shall, subject to its laws and regulations, guarantee investors of the other Contracting Party the transfer of their investments and returns held in the territory of one Contracting Party, including:

a) Profits, dividends, interest and other legitimate income;

b) Amounts from liquidation of investments;

c) Payments made pursuant to a loan agreement in connection with investment;

d) Royalties in item (iv) (a) of Article 1;;

e) Payments of technical assistance or technical service fee, management fee;

f) Payments in connection with projects on contract;

g) Normal earnings of nationals of the other Contracting Party who work in connection with an investment in the territory of one Contracting Party.

Article 6.

The transfer mentioned in Articles 4 and 5 of this Agreement shall be made in freely convertible currency at the official rate of exchange prevailing at the time of transfer.

Article 7.

If a Contracting Party or its Agency makes payment to an investor under a guarantee it has granted to an investment of such investor in the territory of the other Contracting Party, such other Contracting Party shall recognize the transfer of any right or claim of such investor to the former Contracting Party or its agency and recognize the subrogation of the former Contracting Party or its Agency to such right or claim. The subrogated right or claim shall not be greater than the original right or claim of the said investor

Article 8.

This Agreement shall apply to investments which are made prior to or after its entry into force by investors of either Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter.

Article 9.

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through diplomatic channels.

2. If a dispute cannot thus be settled within six (6) months, it shall upon the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal.

3. Such tribunal shall be composed of three (3) arbitrators. Within two (2) months from the date on which either Contracting Party receives the written notice requesting for arbitration from the other Contracting Party, each Contracting Party shall appoint one arbitrator. These two arbitrators shall, within two (2) months, jointly select a third arbitrator who is a national of a third State which has diplomatic relations with both Contracting Parties. The third arbitrator shall be appointed by two Contracting Parties as chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted within four (4) months from the date of the receipt of the written notice for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator (s) who has or have not been appointed. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the next senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointment (s).

5. The arbitral tribunal shall determine its own procedures. The tribunal shall reach its award in accordance with the provisions of this Agreement and the principles of international law recognized by both Contracting Parties.

6. The tribunal shall reach its award by a majority of votes. Such award shall be final and binding on both Contracting Parties. The ad hoc arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its award.

7. Each Contracting Party shall bear the cost of its appointed arbitrator and of its representation in arbitral proceedings. The remuneration of the chairman and the tribunal as well as the relevant costs incurred in discharging their functions shall be borne in equal parts by the Contracting parties.

Article 10.

1. Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investments shall, as much as possible, be amicably settled through negotiations between the parties to the dispute.

2. If a dispute between one Contracting party and an investor of the other Contracting Party cannot amicably be settled within six (6) months, the investor may submit the following dispute to international arbitration:

a) A dispute on the matter of compensation mentioned in Article 4 of this Agreement and other matters related thereto;Article 4 of this Agreement and other matters related thereto;

b) Any other dispute on the matter of this Agreement agreed by the two parties to the dispute for submission to international arbitration.

3. An international arbitral tribunal shall be constituted for each individual case. Each party shall appoint a member of the tribunal in the absence of any other arrangement within two (2) months from the date on which written notification for arbitration has been given by one party to the other and these two members shall, within two (2) months after their appointments agree on an appointment of a national of a third State having diplomatic relations with the two Contracting Parties as Chairman of the tribunal. If any member has not been appointed within the period specified above, the President of the International Court of Justice shall be invited to make the appointment. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the member of the Court next in seniority who is not a national of either Contracting Party shall be invited to make the appointment.

4. Each party to the dispute shall bear the cost of its appointed member of the tribunal. The remuneration of the chairman and the relevant costs incurred in discharging his function shall be borne in equal parts by the two parties.

5. In Conformity with the provisions of this Agreement, the tribunal shall determine its rules and procedures using as a guide the Convention on the Settlement of Investment Disputes between States and Nationals of the Other States done in Washington D. C. on March 18, 1965.

6. The tribunal shall make its decision by a majority of votes, and the decision shall be final and binding.

Article 11.

If the treatment to be accorded by one Contracting Party in accordance with its laws and regulations to investments or activities associated with such investments of investors of the other Contracting Party is more favorable than the treatment provided for in this Agreement, the more favorable treatment shall be applicable.

Article 12.

1. The representatives of two Contracting Parties shall hold meetings from time to time for the purpose of:

a) Reviewing the implementation of this Agreement;

b) Exchanging information on legal issues and investment opportunities;

c) Resolving disputes arising out of this Agreement;

d) Exchanging proposals on promotion and protection of investments;

e) Studying other issues in connection with investments.

2. Where either Contracting Party requests consultations on any metter concerning Paragraph 1 of this Article or any modifications in this Agreement, the other Contracting Party shall give prompt response and the consultation shall be held alternately in the People's Republic of China and the Republic of the Philippines.

Article 13.

1. This Agreement shall enter into force thirty (30) days after the date on which both Contracting Parties have received the written notice of fulfillment of their respective internal legal procedures, and shall remain in force for a period of ten (10) years.

2. This Agreement shall remain in force for a period of ten (10) years and shall continue to be in force hereafter unless, after the expiry of the initial period of nine (9) years, either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The notice of termination shall become effective one (1) year after it has been received by the other Contracting Party.

3. With respect to investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 12 shall continue to be effective for a further period of five (5) years from such date of termination.

DONE and signed in Duplicate in Manila on 20 July 1992, in the Chinese and English languages, both texts being equally authentic.

For the Government of the People's Republic of China

Wang Wendong

For the Government of the Republic of the Philippines

Lilia R. Bautista