AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE REPUBLIC OF THE PHILIPPINES ON THE PROMOTION AND PROTECTION OF INVESTMENTS.

The Portuguese Republic and the Republic of the Philippines, hereinafter referred to as the Contracting Parties:

Desiring to intensify the economic co-operation between the two States;

Intending to encourage and create favourable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit;

Recognising that the mutual promotion and protection of investments on the basis of this Agreement will stimulate business initiative, and promote economic prosperity;

Have agreed as follows:

Article 1. Definitions

For purpose of this Agreement:

1— The term «investments» shall mean every kind of assets and rights invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter including, in particular, 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, stocks, debentures, or other forms of interest in the equity of companies or other forms of participation and or economic interests;

c) Claims to money or to any other rights having an economic value;

d) Intellectual property rights such as copyrights, patents, utility models, industrial designs, trade marks, trade names, trade and business secrets, technical processes, know-how and good will;

e) Concessions conferred by law under a contract or administrative act of a competent state authority, including concessions for prospecting, research and exploitation of natural resources;

f) Assets that are placed at the disposal of a lessee, in the territory of a Contracting Party under a leasing agreement and in conformity with its laws and regulations.

Any alteration of the form in which assets are invested shall not affect their character as investment, provided that such a change is in accordance with the laws and regulations of the Contracting Party in which territory the investment was made.

2— The term «returns» shall mean the amount yielded by investments, over a given period, in particular, though not exclusively, shall include profits, dividends, interests, royalties or other forms of income related to the investment including technical assistance fees.

In cases where the returns of investments, as defined above, are reinvested, the income resulting from the reinvestment shall also be considered as income related to the first investment.

The returns of investments shall be subject to the same protection given to investment.

3— The term «investors» shall mean:

a) With respect to the Portuguese Republic:

i) Natural persons having the nationality of Portugal, in accordance with its laws and regulations, and

ii) Legal persons, including corporation, commercial companies or other companies or associations, which have a main office in the territory of Portugal, are incorporated or constituted and operate in accordance with its laws and regulations.

b) With respect to the Republic of the Philippines:

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

ii) Legal entities, including companies, associations of companies, trading corporate entities and other organizations that are incorporated or, in any event, are properly organized and actually doing business under the laws of the respective Contracting Party and have their headquarters in the territory of the respective Contracting Party where effective management is carried out.

4— The term «territory» shall mean the land territory, the internal waters, the territorial sea, the continental shelf and all the other areas upon which the Parties exercise their sovereignty, sovereignty rights or jurisdictional rights in accordance with the international law.

Article 2. Promotion and Protection of Investments

1— Each Contracting Party shall promote and encourage, as far as possible, within its territory investments made by investors of the other Contracting Party and shall admit such investments into its territory in accordance with its laws and regulations. It shall in any case accord such investments fair and equitable treatment.

2— Investments made by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations shall enjoy full protection and security in the territory of the latter.

Neither Contracting Party shall in any manner impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment, or disposal of investments in the territory of investors of the other Contracting Party.

Article 3. National and the Most Favoured Nation Treatment

1— Investments made by investors of one Contracting Party in the territory of the other Contracting Party, shall be accorded treatment which is fair and equitable and not less favourable than the latter Contracting Party accords to the investments of its own investors or investments of investors of any third State.

2— Both Contracting Parties shall accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investments made in its territory, treatment which is fair and equitable and not less favourable than the latter Contracting Party accords to its own investors or to investors of any third State.

3— The provisions of this article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

a) Existing or future free trade area, customs union, common market or other similar international agreements including other forms of regional economic co-operation to which either of the Contracting Parties is or may become a Party, and

b) Any international agreement or arrangement relating wholly or mainly to taxation.

Article 4. Expropriation

1— Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalized or subject to any other measure with effects equivalent to expropriation or nationalization (hereinafter referred to as «expropriation») except by virtue of law for a public purpose, on a non-discriminatory basis and upon prompt payment of just compensation.

2— Such compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation or the impending expropriation became known in such a way as to affect the value of the investment (hereinafter referred to as the «valuation date»).

3— Such fair market value shall be calculated in a freely convertible currency on the basis of the market rate of exchange existing for that currency on the valuation date. Compensation shall be paid promptly and include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.

4— The investor whose investments are expropriated, shall have the right under the law of the expropriating Contracting Party to the prompt review by a judicial or other competent authority of that Contracting Party of its case and of valuation or its investments in accordance with the principles set out in this article.

Article 5. Compensation for Losses

Investors of either Contracting Party whose investments suffer losses in the territory owing to war, revolution, a state of national emergency, revolt, insurrection, other armed conflicts or other similar events considered as such by international law, in the territory of the other Contracting Party shall be accorded treatment no less favourable by the latter Contracting Party than that Contracting Party accords to the investments of its own investors, or of any third State, whichever is more favourable, as regards restitution, indemnification, compensation or other settlement for valuable consideration. Any payment made under this article shall be, without delay, freely transferable in convertible currency.

Article 6. Transfers

1— Pursuant to its own laws and regulations, each Contracting Party shall guarantee investors of the other Contracting Party the free transfer of payments related to their investments, in particular, though not exclusively:

a) Capital and additional amounts necessary to maintain or increase the investments;

b) The returns defined in paragraph 2, article 1 of this Agreement;

c) Funds in service, repayment and amortization of loans, recognized by both Contracting Parties to be an investment;

d) The proceeds obtained from the sale or from the total or partial liquidation of the investment;

e) Any compensation or other payment referred to in articles 4 and 5 of this Agreement;

f) Any preliminary payments that may be made in the name of the investor in accordance with article 7 of this Agreement;

g) Wages earned by nationals of one of the Contracting Parties, duly authorized to work in connection with the investment in the territory of the other Contracting Party.

2— The transfers referred to in this article shall be made without delay at the exchange rate applicable on the date of the transfer in convertible currency, in accordance with the laws and regulations in force of the Contracting Party in which territory the investment was made.

Article 7. 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 this Agreement.

Article 8. Settlement of Disputes between the Contracting Parties

1— Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled by negotiations through diplomatic channels.

2— If the Contracting Parties fail to reach such settlement within six months after the beginning of negotiations, the dispute shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal, in accordance with the provisions of this article.

3— The arbitral tribunal shall be constituted ad hoc, as follows: each of the Contracting Parties shall appoint one member and these two members shall propose a national of a third State as chairman to be appointed by the two Contracting Parties. The members shall be appointed within two months and the chairman shall be appointed within three months from the date on which either Contracting Party notifies the other that it wishes to submit the dispute to an arbitral tribunal.

4— If the deadlines specified in paragraph 3 of this article are not complied with, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is prevented from doing so, or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments.

5— If the Vice-President is also a national of either Contracting Party or if he is prevented from making the appointments for any other reason, the appointments shall be made by the member of the Court who is next in seniority and who is not a national of either Contracting Party.

6— The chairman of the arbitral tribunal shall be a national of a third State with which both Contracting Parties maintain diplomatic relations.

7— The arbitral tribunal shall rule according to majority vote. The decisions of the arbitral tribunal shall be final and binding on both Contracting Parties. Each Contracting Party shall be responsible for the costs of its own arbitrator and of its representatives at the arbitral proceedings. Both Contracting Parties shall assume an equal share of the expenses incurred by the chairman, as well as any other expenses.

The arbitral tribunal may make a different decision regarding costs. In all other respects, the arbitral tribunal shall define its own rules of procedures.

Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1— Any dispute which may arise between one Contracting Party and an investor of the other Contracting Party concerning an investment of that investor in the territory of the former Contracting Party shall be settled amicably through negotiations.

2— If such dispute cannot be settled as specified in the paragraph 1 of the present article within a period of six months from the date of request for settlement, the investor concerned may submit the dispute to only one of the following:

a) The competent court of the Contracting Party for decision; or

b) The International Centre for the Settlement of Investment Disputes (ICSID) through conciliation or arbitration, established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington, D. C., on March 18, 1965. If the Contracting Party to the dispute is not a party of the above mentioned Convention, the dispute shall be settled in accordance with the Additional Facility for the Administration of Proceedings by the Secretariat of the ICSID; or

c) An ad hoc international arbitral tribunal established under the arbitral rules of the United Nations Commission on International Law (UNCITRAL). The Parties to the dispute may agree in writing to change these rules. Arbitral decision shall be binding for both Parties.

3— Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and a Contracting Party has failed to abide by or to comply with the award rendered by the International Centre for the Settlement of Investment Disputes.

4— The award shall be enforceable on the parties and shall not be subject to any appeal or remedy other than those provided for in the said Convention. The award shall be enforceable in accordance with the domestic laws and regulations of the Contracting Parties in whose territory the investment in question is situated.

Article 10. Application of other Rules

1— If the provisions of laws and regulations of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such provisions shall, to the extent that they are more favourable, prevail over this Agreement.

2— Both Contracting Parties shall fulfill any emerging obligations, beyond the ones foreseen in the present Agreement, regarding investments made by investors of the other Contracting Party of its territory.

Article 11. Application of the Agreement

This Agreement shall apply to all investments, made by investors from one of the Contracting Parties in the territory of the other Contracting Party in accordance with the respective legal provisions, prior to as well as after its entry into force, but shall not apply to any dispute concerning investments which have arisen before its entry into force.

Article 12. Consultations

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter related to the interpretation and application of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties, which shall, if necessary, propose meetings at a place and a time to be agreed upon through diplomatic channels.

Article 13. Entry Into Force and Duration

1— This Agreement shall enter into force 30 days after the date of the later notification by the Contracting Parties in writing, through diplomatic channels, that their internal legal requirements for the entry into force of the Agreement have been complied with.

2— This Agreement shall remain in force for a period of 10 years. It shall remain in force thereafter until either Contracting Party notifies the other Contracting Party in writing of its intention to terminate the Agreement. The notice of termination shall become effective one year after the date of notification.

3— In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of article 1 to 13 shall remain in force for a further period of 10 years from the date of termination of the present Agreement.

4— Any amendment or revision to the text of this Agreement shall be done by mutual consent of the Parties. This amendment or revision shall enter into force in accordance with the provision on entry into force.

Done in duplicate in Manila this 8th day of November 2002 in the portuguese and english languages, all texts being equally authentic.

For the Portuguese Republic:

For the Republic of the Philippines:

On the occasion of the signing of the Agreement between the Portuguese Republic and the Republic of the Philippines on the Promotion and Reciprocal Protection of Investments, the undersigned duly authorized to this effect, have agreed also on the following provisions, which constitute an integral part of the said Agreement:

1— With reference to article 2 of this Agreement: The provisions of article 2 of this Agreement should be applicable when investors of one of the Contracting Parties are already established in the territory of the other Contracting Party and wish to extend their activities or to carry out activities in other sectors.

Such investments shall be considered as new ones and, to that extent, shall be made in acoordance with the rules on the admission of investments, according to article 2 of this Agreement.

2— With reference to article 3 of this Agreement:

The Contracting Parties consider that provisions of article 3 of this Agreement shall be without prejudice to the right of either Contracting Party to apply the relevant provisions of their tax law which distinguish between tax-payers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested.

Done in duplicate in Manila at this 8th day of November 2002 in the portuguese and english languages, all texts being equally authentic.

For the Portuguese Republic:

For the Republic of the Philippines: