2849 - HB1180

AGREEMENT BETWEEN THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM AND THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Socialist Republic of Vietnam and the Government of the Republic of the Philippines hereinafter called "Contracting Parties",

Bearing in mind the friendly and cooperative relations existing between the two countries and their peoples,

Desiring to create favorable conditions for greater economic cooperation between them and, in particular, for the investment of capital by investors of each Contracting Party on the basis of equality, mutual benefit and mutual respect for the independence and sovereignty of each Contracting Party,

Recognizing that the reciprocal encouragement and protection of such investments will help increase prosperity in both States,

Have agreed as follows:

ARTICLE I

DEFINITIONS

For the Purpose of this Agreement :

1. The term "investment" shall mean any kind of asset invested by investors of one Contracting Party in the territory of the other, in conformity with the laws and regulations of the latter, including but not exclusively:

a. movable and immovable properties and any other rights such as mortgages, liens or pledges;

b. shares, stocks and debentures of companies or interest wherever incorporated in the property of such companies;

c. claims to money or to any performance under contract having a financial value;

d. intellectual property rights, including copyright, commercial trademark, patents, industrial designs, know-how, trade secrets, trade names and goodwill;

e. business concessions conferred by law or under contract including concessions to search for, cultivate, extract or exploit natural resources.

2. The term "investors" shall mean any national or company being a national of a Contracting Party who effected or is effecting investments in the territory of the other Contracting Party.

3. The term "nationals" shall mean:

a. with respect to the Socialist Republic of Vietnam, any natural person having the nationality of that Contracting Party in accordance with its laws;

b. with respect to the Republic of the Philippines, citizens of the Philippines within the meaning of Article IV of its Constitution.

4. The term "companies" shall mean corporations, partnerships or other associations, 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 fulfill commitments relating to peace and security.

5. The term "returns" shall mean the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties or fees and other legitimate returns.

6. The term "territory" shall mean:

a. with respect to the Socialist Republic of Vietnam, the national territory as defined in its laws;

b. with respect to the Republic of the Philippines, the national territory defined in Article I of its Constitution.

ARTICLE II

PROMOTION AND PROTECTION OF INVESTMENT

1. Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to invest in its territory, and shall admit such capital in accordance with its laws and regulations.

2. Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy adequate protection and security in the territory of the other Contracting Party.

ARTICLE III

SCOPE OF AGREEMENT

1. The benefits of this Agreement shall apply only in cases where the investment of capital by the investors of one Contracting Party in the territory of the other Contracting Party has been specifically approved in writing by the competent authorities of the latter Contracting Party.

2. Investors of either Contracting Party shall apply for such approval in respect of any investment of capital whether made before or after the entry into force of this Agreement.

ARTICLE IV

MOST FAVORED NATION TREATMENT

1. Each Contracting Party shall in its territory accord investments of investors of the other Contracting Party treatment not less favorable than that it accords to investments or return of investments of investors of any third State.

2. Each Contracting Party shall in its territory accord the investors of the other Contracting Party, as regards management, maintenance, use, enjoyment, or disposal of their investments, treatment not less favorable than that it accords to investors of any third State.

3. The provisions of this Agreement relative to the grant of treatment not less favorable than that accorded to the investors of any third State shall not be construed as to oblige one Contracting Party to extend to the investors 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 organization, or measures leading to the formation of a customs union or a free trade area, 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

COMPENSATION FOR DAMAGES OR LOSSES

1. Where investments of investors of one Contracting Party in the territory of the other Contracting Party suffer damages or losses owing to war or other armed conflicts, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the other Contracting Party, the investors concerned shall be accorded treatment as regards restitution, indemnification, compensation or other settlement, in any event, not less favorable than that accorded in the same circumstances to investors of any third State.

2. Without prejudice to the foregoing provisions of this Article, the investors of one Contracting Party, shall, in respect of any matter dealt with therein, be accorded in the territory of the other Contracting Party, treatment not less favorable than that accorded to the investors of any third State.

ARTICLE VI

EXPROPRIATION

1. In any case where investments of investors of one Contracting Party are subject, directly or indirectly, to any measure of expropriation, the investors concerned shall be accorded in the territory of the other Contracting Party fair and equitable treatment in relation to any such measure. No such

measure shall be taken except for public purposes and against payment of compensation. Such compensation shall be adequate, realizable, freely transferable and shall be made without delay. Such compensation shall amount to the market value or in the absence thereof, the actual loss sustained of the investment expropriated immediately prior to the date in which the decision to expropriate is announced or made public. Such amount shall be calculated according to the method agreed upon by both parties that is in conformity with internationally acknowledged standard evaluation methods.

2. The legality of any expropriation and the amount and method of payment of compensation shall be subject to review by due process of law.

3. Where a Contracting Party expropriates assets of a company which is incorporated or constituted under the law in force in its territory, and in which an investor of the other Contracting Party owns shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee compensation as specified therein to such investor of the other Contracting Party who is the owner of those shares.

ARTICLE VII

REPATRIATION OF INVESTMENT

Each Contracting Party shall within the scope of its laws and regulations, ensure the free transfer of investments, the returns thereof as well as the total or partial liquidation of investments of investors of the other Contracting Party subject, however, 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. The earnings of nationals of a Contracting Party, derived from their work and services in connection with an investment in the territory of the other Contracting Party, after payment of taxes and deduction of their living expenses spent in accordance with such Contracting Party's laws and regulations, shall be freely transferable to the national's country.

ARTICLE VIII

TRANSFERS

Transfers as stipulated in Articles VI and VII shall be made without undue delay, in accordance with their respective national laws and regulations. Such transfers shall be made in freely convertible currency at the official rate of exchange prevailing at the time of remittance.

ARTICLE IX

SUBROGATION

1. If either Contracting Party makes payment under an insurance or guarantee agreement with its own investors in respect of an investment or any part thereof in the territory of the other Contracting Party, the latter Contracting Party shall recognize 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 investors. 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 favorable than that accorded to the funds of a private investor derived 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 X

SETTLEMENT OF DISPUTES BETWEEN INVESTORS AND THE CONTRACTING PARTY

1. All kinds of disputes or differences, including disputes over the amount of compensation for expropriation or similar measures, between the Contracting Party and an investor of the other Contracting Party concerning an investment or return of investment of that investor in the territory of the other shall be settled amicably through negotiations.

2. If such disputes or differences cannot be settled according to the provisions of paragraph (1) of this Article, within six (6) months from the date of request for settlement, the investor concerned may submit the dispute to any of the following:

a. the competent court of the Contracting Party for decision; or

b. an ad-hoc arbitral tribunal especially constituted by the two Contracting Parties; or

c. any existing arbitral tribunal mutually agreed upon by the two Contracting Parties; or

d. if both Contracting Parties are at that time parties to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of March 18, 1965, done in Washington, D.C., may refer the dispute to the International Center for the Settlement of Investment Disputes, through conciliation or arbitration.

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 decision or award of any of the abovementioned bodies chosen.

ARTICLE XI

SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES CONCERNING INTERPRETATION AND APPLICATION OF THE AGREEMENT

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall be settled, as far as possible, through friendly consultations by both parties through diplomatic channels.

2. If such disputes cannot be settled within six (6) months from the date on which either Contracting Party informs in writing the other Contracting Party, they shall, at the request of either Contracting Party, be submitted for settlement to an ad-hoc international arbitral tribunal.

3. The ad-hoc international arbitral tribunal mentioned above shall be established as follows: the arbitral tribunal is composed of three arbitrators; each Contracting Party shall appoint one arbitrator; the two arbitrators shall propose by mutual agreement the third arbitrator who is a national of a third State which has diplomatic relations with both Contracting Parties; and the third arbitrator shall be appointed as Chairman of the tribunal by both Contracting Parties.

4. If the appointments of the members of the arbitral tribunal are not made within a period of six (6) months from the date of request for arbitration, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments within three (3) months. Should the President be a national of one Contracting Party or should he be unable to perform this designation because of other reasons, this task shall be entrusted to the Vice-President of the Court, or to the next senior Judge of the Court who is not a national of either Contracting Party.

5. The arbitral tribunal shall determine its own procedure. It shall decide its award by majority of votes. Such award is final and binding upon the Contracting Parties.

6. Each Contracting Party shall bear the cost of its own member of the panel and of its representative in the arbitral proceedings. The costs of the remuneration of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

ARTICLE XII

APPLICATIONS OF OTHER PROVISIONS

The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations between the two Contracting Parties.

ARTICLE XIII

CONSULTATION AND AMENDMENT

1. Either Contracting Party may request that a consultation be held on any matter that both Contracting Parties agree to discuss.

2. This Agreement may be amended at any time, if deemed necessary, by mutual consent.

ARTICLE XIV

ENTRY INTO FORCE, DURATION AND TERMINATION

This Agreement shall enter into force thirty (30) days after the date on which the Contracting Parties notify each other that their constitutional requirements have been fulfilled. It shall remain in force for an initial period of ten (10) years. It shall thereafter continue to be in force indefinitely, subject to the right of either Contracting Party to terminate it by twelve (12) months' prior notice in writing to the other Contracting Party. The notice may be given at any time after the end of the ninth year. However, with respect to an investment approved while the Agreement is in force, its provisions shall continue to have effect for a period of ten (10) years from the date of this termination.

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

DONE and signed in Manila this 27th day of February 1992, in two original copies.

FOR THE GOVERNMENT
OF THE SOCIALIST
REPUBLIC OF VIETNAM

DAU NGOC XUAN
Chairman
State Committee for
Cooperation and
Investment

FOR THE GOVERNMENT
OF THE REPUBLIC OF
THE PHILIPPINES

LILIA R. BAUTISTA
Acting Secretary
Department of Trade
and Industry

P R O T O C O L

At the time of signing of the Agreement between the Government of the Socialist Republic of Vietnam and the Government of the Republic of the Philippines on the Promotion and Protection of Investments, the Undersigned have further agreed that the two Contracting Parties shall exchange copies of the Vietnamese and Filipino texts of the Agreement within three (3) months after the signing of the Agreement. In case of divergence of interpretation, the English text shall prevail.

This provision shall be considered an integral part of the Agreement.

In witness whereof, the Undersigned have signed this present Protocol.

Done at Manila, this 27th day of February 1992 in two original copies.

FOR THE GOVERNMENT
OF THE SOCIALIST
REPUBLIC OF VIETNAM

DAU NGOC XUAN
Chairman
of the State Committee
for Cooperation and Investment

FOR THE GOVERNMENT
OF THE REPUBLIC OF
THE PHILIPPINES

LILIA R. BAUTISTA
Acting Secretary
Department of Trade
and Industry