

**AGREEMENT BETWEEN THE REPUBLIC OF THE PHILIPPINES AND  
THE REPUBLIC OF AUSTRIA FOR THE PROMOTION AND  
RECIPROCAL PROTECTION OF INVESTMENTS**

THE REPUBLIC OF THE PHILIPPINES AND THE REPUBLIC OF AUSTRIA  
hereinafter referred to as the "Contracting Parties",

DESIRING to create favourable conditions for greater economic  
cooperation between the Contracting Parties;

RECOGNIZING that the promotion and protection of investments will  
strengthen the readiness for such investments and thereby make an  
important contribution to the development of economic relations;

HAVE AGREED AS FOLLOWS:

**ARTICLE 1  
DEFINITIONS**

For the purpose of this Agreement:

(1) the term "investment" comprises all assets and 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 and other types of participation in undertakings;
- c) claims to money that has been given in order to create an  
economic value or claims to any performance having an  
economic value;
- d) intellectual and industrial property rights, as defined in the  
multilateral agreements concluded under the auspices of the  
World Intellectual Property Organization, including, but not  
limited to, copyright, trademarks, patents, industrial designs  
and technical processes, know-how, trade secrets, trade  
names and goodwill;
- e) business concessions granted in accordance with the laws  
and regulations of the respective Contracting Party including  
concessions to search for, extract or exploit natural resources.

(2) the term "investor" means:

- a) with respect to the Republic of the Philippines: individuals  
who are citizens of the Philippines within the meaning of its  
Constitution and make an investment in the other Contracting  
Party's territory;

b) with respect to the Republic of Austria: natural persons who are citizens of the Republic of Austria and make an investment in the other Contracting Party's territory;

c) with respect to the Republic of the Philippines: legal entities, including companies, associations of companies, trading corporate entities and other organizations that are incorporated or, in any event properly organized and actually doing business under the laws of the Republic of the Philippines and have their headquarters in the territory of the Republic of the Philippines where effective management is carried out, as well as corporations organized abroad, effectively controlled by Philippine nationals and registered as doing business under Philippine laws;

d) with respect to the Republic of Austria: any juridical person, or partnership, constituted in accordance with the legislation of the Republic of Austria, having its seat in the territory of the Republic of Austria and making an investment in the other Contracting Party's territory and any juridical person, or partnership, constituted in accordance with the legislation of a Contracting Party or of a Third Party in which the investor referred to above exercises effective control.

(3) the term "returns" means the amounts yielded by an investment, and in particular, though not exclusively, profits, interests, capital gains, dividends, royalties, license fees and other fees.

(4) the term "territory" means in respect of each Contracting Party the territory under its sovereignty as well as its exclusive economic zone and continental shelf over which each Contracting Party exercises sovereign rights or jurisdiction in accordance with its national law and international law.

## **ARTICLE 2**

### **PROMOTION AND PROTECTION OF INVESTMENTS**

(1) Each Contracting Party shall in its territory promote, as far as possible, investments of investors of the other Contracting Party, admit such investments in accordance with its legislation and in any case accord such investments fair and equitable treatment.

(2) Investments admitted according to paragraph (1), and their returns shall enjoy the full protection of the present Agreement. The same applies without prejudice to the regulations of paragraph (1) also for their returns in case of reinvestment of such returns. The legal extension, alteration or transformation of an investment has to be made in accordance with the legislation of the respective Contracting Party.

## **ARTICLE 3**

### **TREATMENT OF INVESTMENTS**

(1) Each Contracting Party shall accord to investors of the other Contracting Party and their investments treatment no less favourable

than that accorded to its own investors and their investments or to investors of any third State and their investments.

(2) The provisions of paragraph (1) shall not be construed as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the present or future benefit of any treatment, preference or privilege resulting from:

(a) any customs union, common market, free trade area, membership in an economic community or multilateral investment agreement;

(b) any international agreement, international arrangement or domestic legislation regarding taxation.

#### **ARTICLE 4 EXPROPRIATION**

(1) Investments of investors of either Contracting Party shall not be expropriated, nationalized or subjected to any measure having equivalent effect (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose by due process of law and accompanied by prompt, adequate and effective compensation.

(2) Such compensation shall be equivalent to the fair market value of the expropriated investment immediately before the date on which the expropriation has occurred. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier. The compensation shall be paid without delay. In the event .that the payment of compensation is delayed, the compensation shall include interest at the prevailing commercial rate from the date of expropriation until the date of payment. The compensation shall be effectively realizable and freely transferable in any freely convertible currency. Provision shall be made in an appropriate manner at or prior to the time of expropriation for the determination and payment of such compensation.

(3) For the avoidance of doubt, where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its territory and in which an investor of the other Contracting Party owns shares, it shall apply the provisions of paragraph (1) of this Article so as to ensure due compensation provided for in that paragraph to such investors to the extent of their interest in the assets expropriated.

(4) The investor shall be entitled to have the legality of the expropriation reviewed by the competent authorities of the Contracting Party having initiated the expropriation.

(5) The investor shall be entitled to have the amount and the provisions for the payment of the compensation reviewed either by the competent authorities of the Contracting Party having initiated the expropriation or by an international arbitral tribunal according to Article 9 of the present Agreement.

## **ARTICLE 5**

### **COMPENSATION FOR DAMAGE OR LOSS**

(1) When investments made by investors of either Contracting Party suffer damage or loss owing to war or other armed conflict, a state of national emergency, revolt, civil disturbances, insurrection, riot or other similar events in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that the latter Contracting Party accords to its own investors or investors of any third state, whichever is the most favourable.

(2) Without prejudice to paragraph 1, investors of one Contracting Party who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting Party resulting from:

- a) requisition of their property or part thereof by the forces or authorities of the latter Contracting Party, or
- b) destruction of their property or part thereof by the forces or authorities of the latter Contracting Party which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded prompt restitution or prompt and adequate compensation where restitution is not possible for the damage or loss sustained. Resulting payments shall be made in a freely convertible currency and be freely transferable without undue delay.

## **ARTICLE 6**

### **TRANSFERS**

(1) Each Contracting Party shall guarantee without undue delay to investors of the other Contracting Party free transfer in freely convertible currency of payments in connection with an investment, in particular but not exclusively, of the

- a) capital and additional amounts for the maintenance or extension of the investment;
- b) amounts assigned to cover expenses relating to the management of the investment;
- c) returns;
- d) repayment of loans;
- e) proceeds from total or partial liquidation or sale of the investment;
- f) compensation payment for expropriation, damage or loss;  
or
- g) payment arising out of a settlement of a dispute.