

April 18, 1997

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

hereinafter referred to as the Contracting States,

DESIRING to intensify economic co-operation between both STATES;

INTENDING to create favorable conditions for investments by nationals and companies of either Contracting State in the territory of the other Contracting State, and to increase prosperity in their respective territories;

RECOGNIZING that encouragement and protection of such investments will benefit the economic prosperity of both States -

HAVE AGREED AS FOLLOWS:

**ARTICLE 1
DEFINITION OF TERMS**

For the purpose of this Agreement:

1. the term "investment" shall mean any kind of asset accepted in accordance with the respective laws and regulations of either Contracting State, and more particularly, though not exclusively:

(a) movable and immovable property as well as other rights in rem, such as mortgages, liens, pledges, usufructs and similar rights;

(b) shares of stocks and debentures of companies or interest in the property of such companies;

(c) claims to money utilized for the purpose of creating an economic value or to any performance having an economic value;

(d) intellectual property rights, in particular copyrights, patents, utility-model patents, registered designs, trade-marks, trade-names, trade and business secrets, technical processes, know-how, and goodwill;

(e) business concessions conferred by law or under contract, including concessions to search for, extract or exploit natural resources;

any alteration of the form in which assets are invested shall not affect their classification as an investment;

2. the term "nationals" shall mean

(a) with respect to the Republic of the Philippines:

citizens of the Philippines within the meaning of its Constitution,

(b) with respect to the Federal Republic of Germany:
Germans within the meaning of the Basic Law of the Federal Republic of Germany,

3. the term "companies" shall mean

(a) with respect to the Republic of the Philippines:
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 State wherein a place of effective management is situated,

(b) with respect to the Federal Republic of Germany:
any juridical 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, irrespective of whether or not its activities are directed at profit;

4. the term "investor" shall mean nationals and companies as defined in numbers 2 and 3;

5. the term "returns" shall mean the amounts yielded by an investment for a definite period of time as profits, interest, capital gains, dividends, royalties, fees and other legitimate returns.

ARTICLE 2 PROMOTION AND ACCEPTANCE

(1) Each Contracting State shall promote as far as possible investments in its territory by investors of the other Contracting State and admit such investments in accordance with its Constitution, laws and regulations as referred to in Article 1 paragraph 1. Such investments shall be accorded fair and equitable treatment.

(2) Neither Contracting State shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use or enjoyment of investments in its territory of investors of the other Contracting State.

ARTICLE 3 TREATMENT

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

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

(3) Each Contracting State shall apply in its territory to investments and to investors of the other Contracting State, with respect to their investments which are made in accordance with the legislation of that Contracting State and activities related to such investments, a treatment not less favorable than that granted to its own investments and investors, or the treatment granted to the investments and investors of the most favored nation, if the latter is more favorable.

(4) The provisions of the preceding paragraphs shall not be construed as to oblige one Contracting State to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:

a) any customs union, common market, free trade area, or regional economic organization of which either Contracting State is a member, or

b) any international agreement relating wholly or mainly to taxation.

(5) If the legislation of either Contracting State or obligations under international law existing at present or established hereafter between the Contracting States in addition to this Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting State to a treatment more favorable than is provided for by this Agreement, such regulation shall to the extent that it is more favorable prevail over this Agreement. Each Contracting State shall observe any other obligation it has assumed with regard to investments in its territory by investors of the other Contracting State.

ARTICLE 4 EXPROPRIATION AND COMPENSATION

(1) Investments by investors of either Contracting State shall enjoy full protection and security in the territory of the other Contracting State.

(2) Investments by investors of either Contracting State shall not be expropriated, nationalized or subjected to any other direct or indirect measure the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting State except for the public benefit and against compensation. Such compensation shall be equivalent to the value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure has become publicly known. It shall be effectively realizable and freely transferable. Provision shall have been made in an appropriate manner at or prior to the time of expropriation, nationalization or comparable measure for the determination and payment of such compensation. The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review by due process of law.

(3) For the avoidance of doubt, where a Contracting State 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 investors of the other Contracting State own shares, it shall apply the provisions of paragraphs 1 and 2 of this Article so as to ensure the compensation provided for in that paragraph to such investors to the extent of their interest in the assets expropriated.

(4) If a Contracting State makes restitution, indemnification, compensation or other settlement for losses suffered owing to war, revolution, state of national emergency, revolt, insurrection, riot or other armed conflicts in the territory of such Contracting State, it shall accord to the investors of the other Contracting State whose investments in the territory of the former have suffered such losses, treatment no less favorable than that which the Contracting State shall accord to its own investors. Resulting payments shall be freely transferable.

(5) Investors of either Contracting State shall enjoy most-favored-nation treatment in the territory of the other Contracting State in respect of the matters provided for

in this Article.

ARTICLE 5 TRANSFERS

(1) Each Contracting State shall guarantee the free transfer of payments in connection with investments made in its territory by investors of the other Contracting State which have been duly registered by its appropriate government agencies if so required, and in particular, though not exclusively:

(a) of the principal and additional amounts to maintain or increase the investment;

(b) of the returns;

(c) of repayments of loans;

(d) of the proceeds from a partial or total liquidation or disposal of the investment, including capital gains on the capital invested;

(e) of the compensation for dispossession or loss pursuant to Article 4 of this Agreement;

(f) of the earnings of individuals, not being its nationals who are allowed to work in connection with an investment in its territory and other amounts appropriated for the coverage of expenses connected with the management of the investment.

(2) Transfers of payment shall be made without delay in a freely convertible currency at the market rate of exchange with respect to spot transactions on the date of transfer in the territory of the Contracting State where the investment is made.

(3) In the absence of a market rate for foreign exchange the appropriate agencies of the Contracting State in whose territory the investment is situated shall admit a rate of exchange that is fair and equitable whereby the most recent rate to inward investments should provide an orientation.

ARTICLE 6 SUBROGATION

If either Contracting State makes a payment to any of its investors under a guarantee it has assumed in respect of an investment in the territory of the other Contracting State, the latter Contracting State shall, without prejudice to the rights of the former Contracting State under Article 10, recognize the assignment, whether under a law or pursuant to a legal transaction, of any right or claim of such investors to the former Contracting State. The latter Contracting State shall also recognize the subrogation of the former Contracting State to any such right or claim (assigned claims) which that Contracting State shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments made by virtue of such assigned claims, Article 4 (2) to (4) as well as Article 5 shall apply *mutatis mutandis*.

ARTICLE 7 CONSULTATION