

**AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF
THE PHILIPPINES AND THE GOVERNMENT OF AUSTRALIA ON
THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Republic of the Philippines and the Government of Australia ("the Parties"),

RECOGNISING the importance of promoting the flow of capital for economic activity and development and aware of its role in expanding economic relations and technical co-operation between them, particularly with respect to investment by investors of one Party in the area of the other Party;

CONSIDERING that investment relations should be promoted and economic co-operation strengthened in accordance with the internationally accepted principles of mutual respect for sovereignty, equality, mutual benefit, non-discrimination and mutual confidence;

ACKNOWLEDGING that investments of investors of one Party in the area of the other Party would be made within the framework of the laws of that other Party; and

RECOGNISING that pursuit of these objectives would be facilitated by a clear statement of principles relating to the protection of investments, combined with rules designed to render more effective the application of these principles within the areas of the Parties,

HAVE AGREED as follows:

Article 1
Definitions

1. For the purposes of this Agreement:

(a) "investment" means every kind of asset, owned or controlled by investors of one Party and admitted by the other Party subject to its law and investment policies applicable from time to time and includes:

(i) movable and immovable, tangible and intangible property, including rights such as mortgages, liens and other pledges, usufructs and similar rights,

(ii) shares, stocks, bonds and debentures and any other form of participation in a company,

(iii) a loan or other claim to money or a claim to performance having economic value,

(iv) intellectual and industrial property rights, including rights with respect to copyright, patents, trademarks, trade names, industrial designs, trade secrets, know-how and goodwill,

(v) business concessions and any other rights required to conduct economic activity and having economic value conferred by law or under a contract, including rights to engage in agriculture, forestry, fisheries and animal husbandry, to search for, extract or exploit natural resources and to manufacture, use and sell products, and

(vi) activities associated with investments, such as the organisation and operation of business facilities, the acquisition, exercise and disposition of property rights including intellectual property rights, the raising of funds and the purchase and sale of foreign exchange;

(b) "return" means an amount yielded by or derived from an investment, including profits, dividends, interest, capital gains, royalty payments, management or technical assistance fees, payments in connection with intellectual property rights, and all other lawful income;

(c) "investor" means:

(i) in respect of the Republic of the Philippines:

(A) a company; or

(B) a natural person who is a citizen of the Philippines within the meaning of its Constitution

(ii) in respect of Australia:

(A) a company; or

(B) a natural person who is a citizen or permanent resident of Australia;

(d) "company" means:

(i) in respect of the Republic of the Philippines - legal entities, including corporations, partnerships, companies, trusts, associations of companies, trading corporate entities and other organisations that are incorporated or, in any event, are legally organised and actually doing business under the laws of the Philippines and which have their place of effective management in the Philippines;

(ii) in respect of Australia - any corporation, association, partnership, trust or other legally recognised entity that is duly incorporated, constituted, set up, or otherwise duly organised:

(A) under the law of Australia; or

(B) under the law of a third country and is owned or controlled by an entity described in paragraph I(d)(i)(A) of this Article or by a natural person who is a citizen or permanent resident of Australia;

regardless of whether or not the entity is organised for pecuniary gain, privately or otherwise owned, or organised with limited or unlimited liability; and

(e) "permanent resident" means a natural person whose residence in a Party is not limited as to time under its law;

(f) "freely convertible currency" means a convertible currency as classified by the International Monetary Fund or any currency that is widely traded in international foreign exchange markets;

2. For the purposes of paragraph 1 (a) of this Article, returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments.

3. For the purposes of this Agreement, a natural person or company shall be regarded as controlling a company or an investment if the person or company has a substantial interest in the company or the investment. Any question arising out of this Agreement concerning the control of a company or an investment shall be resolved to the satisfaction of the Parties.

Article 2

Application of Agreement

1. This Agreement shall apply to investments whenever made.

2. This Agreement shall apply to areas under the sovereignty of the two Parties, together with their respective Exclusive Economic Zones and their continental shelves, hereinafter referred to as the Party's "area."

3. Where a company of a Party is owned or controlled by a citizen or a company of any third country, the Parties may decide jointly in consultation not to extend the rights and benefits of this Agreement to such company.

4. A company duly organised under the law of a Party shall not be treated as an investor of the other Party, but any investments, as defined in paragraph 1(a) of Article 1, in that company by investors of that other Party shall be protected by this Agreement.

5. This Agreement shall not apply to a company organised under the law of a third country within the meaning of paragraph 1(d)(i)(B) of Article 1 where the provisions of an investment protection agreement with that country have already been invoked in respect of the same matter.

6. This Agreement shall not apply to a natural person who is a permanent resident but not a citizen of a Party where:

(a) the provisions of an investment protection agreement between the other Party and the country of which the person is a citizen have already been invoked in respect of the same matter; or

(b) the person is a citizen of the other Party.

Article 3

Promotion, admission and protection of investments

1. Each Party shall encourage and promote investments in its area by investors of the other Party and shall admit such investments in accordance with its Constitution, laws, regulations and investment policies.
2. Each Party shall ensure that and equitable treatment investments are accorded fair and equitable treatment.
3. This Agreement shall not prevent an investor of one Party from invoking the provisions of any law or policy of the other Party which are more favourable than the provisions of this Agreement.

Article 4

Most favoured nation treatment

1. Each Party shall in its area accord investments of investors of the other Party treatment not less favourable than that which it accords to investments of investors of any third State.
2. Each Party shall in its area accord the investors of the other Party, as regards management, maintenance, use, enjoyment or disposal of their investments, treatment not less favourable than that which it accords to investors of any third State.
3. The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the investors of any third State shall not be construed as to oblige one Party to extend to investors of the other Party the benefit of any treatment, preference or privilege resulting from:
 - (a) any existing or future customs union, common market, free trade area, regional economic organisation, interim agreement or arrangement leading to the formation of a customs union, common market, free trade area or regional economic organisation to which either Party is or may become a member or other arrangement for the facilitation of frontier trade; or
 - (b) the provisions of a double taxation agreement with third country.

Article 5

Entry and sojourn of personnel

1. Each Party shall, subject to its laws, rules and regulations applicable from time to time relating to the entry and sojourn of non-citizens, permit natural persons who are investors of the other Party and personnel employed by companies of that other Party to enter and remain in its area for the purpose of engaging in activities connected with investments.
2. Each Party shall, subject to its laws, rules and regulations applicable from time to time, permit investors of the other Party who have made investments in the area of the first Party to employ within its area key technical and managerial personnel of their choice regardless of citizenship.

Article 6

Transparency of laws

Each Party shall, with a view to promoting the understanding of its laws, rules, regulations and investment policies that pertain to or affect investments in its area by investors of the other Party, make such laws, rules, regulations and policies public and readily accessible.

Article 7

Expropriation and nationalisation

1. Neither Party shall nationalise, expropriate or subject to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") the investments of investors of the other Party unless the following conditions are complied with:

- (a) the expropriation is for a public purpose related to the internal needs of that Party and under due process of law;
- (b) the expropriation is non-discriminatory; and
- (c) the expropriation is accompanied by the payment of prompt, adequate and effective compensation.

2. The compensation referred to in paragraph 1(c) of this Article shall be computed on the basis of the market value of the investment immediately before the expropriation or impending expropriation became public knowledge. Where that value cannot be readily ascertained, the compensation shall be determined in accordance with generally recognised principles of valuation and equitable principles taking into account the capital invested, depreciation, capital already repatriated, replacement value, currency exchange rate movements and other relevant factors.

3. The compensation shall be paid without delay and shall be freely transferable between the areas of the Parties. The compensation shall be payable either in the currency in which the investment was originally made or, if requested by the investor, in any other freely convertible currency.

Article 8

Compensation for losses

When a Party adopts any measures relating to losses in respect of investments in its area by citizens or companies of any other country owing to war or other armed conflict, revolution, a state of national emergency, civil disturbance or other similar events, the treatment accorded to investors of the other Party as regards restitution, indemnification, compensation or other settlement shall be no less favourable than that which the first Party accords to citizens or companies of any third country.

Article 9

Transfers

1. Each Party shall, when requested by an investor of the other Party, permit all funds of that investor related to an investment in its area to be transferred freely and without unreasonable delay. Such funds include the following:

- (a) the initial capital plus any additional capital used to maintain or expand the investment;