

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

The Government of the Republic of the Philippines and the Government of Canada hereinafter referred to as the "Contracting Parties".

DESIRING to intensify economic cooperation between the Contracting Parties;

INTENDING to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party, and to increase prosperity in their respective territories;

RECOGNIZING that encouragement and protection of such investments will benefit the economic prosperity of the Contracting Parties;

HAVE AGREED AS FOLLOWS:

**ARTICLE 1
DEFINITIONS**

For the purpose of this Agreement:

(a) "enterprise" means

(i) any entity constituted or organized under applicable law, whether or not for profit, whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association; and

(ii) a branch of any such entity;

(b) "fair market value" means the value of an investment or return, immediately prior to its expropriation or immediately before the expropriation became public knowledge, whichever is the earlier. Valuation criteria shall include going concerned value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

(c) "financial service" means a service of a financial nature, such as, but not limited to, insurance, and services incidental or auxiliary to a service of a financial nature;"

(d) "financial institution" includes any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Contracting Party in whose territory it is located;

(e) "intellectual property rights" includes copyright and related rights, trademark rights, patent rights, and the other rights referred to in the Agreement on Aspects of Trade-Related Intellectual Property Rights forming part of the Agreement establishing the World Trade Organization, done at Marrakesh, April 1994.

(f) "investment" means any kind of asset owned or controlled either directly, or indirectly through an investor of a third State, by an investor of one Contracting

Party in the territory of the other Contracting Party in accordance with the latter's laws and, in particular, though not exclusively includes:

- (i) movable and immovable property and any related property rights, such as mortgages, liens usufructs or pledges;
- (ii) shares, stock, bonds and debentures or any other form of equity participation in a company, business enterprise or joint venture;
- (iii) money, claims to money, and claims to performance under contract having an economic value;
- (iv) goodwill;
- (v) intellectual property rights;
- (vi) rights, conferred by law or under contract, to undertake any economic and commercial activity, including any rights to search for, cultivate, extract or exploit natural resources.

Any change in the form of an investment does not affect its character as an investment.

(g) "investor" means:

in the case of the Republic of the Philippines,

- (i) Individuals who are citizens of the Philippines within the meaning of its Constitution; or
- (ii) enterprises that are incorporated or, in any event, are properly organized and actually doing business under the laws of the Republic of the Philippines and have their headquarters in the territory of the Philippines where effective management is carried out,

who makes the investment in the territory of Canada and who does not possess the citizenship of Canada; and

in the case of Canada:

- (i) Any natural person possessing the citizenship of or permanently residing in Canada in accordance with its laws; or
- (ii) Any enterprise incorporated or duly constituted in accordance with the applicable laws of Canada,

who makes investment in the territory of the Republic of the Philippines.

(h) "measure" includes any law, rule, regulation, requirement, or established governmental procedure or practice; "existing measure" means a measure existing at the time this Agreement enters into force;

(i) "returns" means all amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties, fees or other current income;

(j) "state enterprise" means an enterprise that is governmentally-owned or controlled through ownership interests by a government;

(k) "territory" means:

(i) In respect of the Republic of the Philippines, the national territory as defined in Article 1 of its Constitution.

(ii) In respect of Canada, the territory of Canada as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea, over which Canada exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas.

ARTICLE II

ESTABLISHMENT, ACQUISITION AND PROTECTION OF INVESTMENT

(1) Each Contracting Party shall promote investments in its territory by nationals and companies of the other Contracting Party.

(2) Each Contracting Party shall accord investments or returns of investors of the other Contracting Party.

(a) fair and equitable treatment in accordance with principles of international law, and

(b) full protection and security.

(3) Each Contracting Party shall, subject to the terms of this Agreement and the Annex, including inter-alia paragraphs 4 and 5 of this Article and paragraph 2 of Article 4, permit establishment of a new business enterprise or acquisition of an existing business enterprise or a share of such enterprise by investors or prospective investors of the other Contracting Party on a basis no less favourable than that which, in like circumstances, it permits such acquisition or establishment by:

(a) its own investors or prospective investors; or

(b) investors or prospective investors of any third state.

(4) Decisions by either Contracting party, pursuant to measures not inconsistent with this Agreement, as to whether or not to permit an acquisition shall not be subject to the provisions of Articles XIII or XV of this Agreement.

(5) Decisions by either Contracting Party not to permit establishment of a new business enterprise or acquisition of an existing business enterprise or a share or such enterprise by investors or prospective investors shall not be subject to the provisions of Article XIII of this Agreement.

ARTICLE III

MOST-FAVOURED-NATION (MFN) TREATMENT AFTER ESTABLISHMENT AND EXCEPTIONS TO MFN

(1) Each Contracting Party shall grant to investments, or returns of investors of the other Contracting Party, treatment no less favourable than that which, in like circumstances, it grants to investments or returns of investors of any third State.

(2) Each Contracting Party shall grant investors of the other Contracting party, as regards their management, use, enjoyment or disposal of their investments or returns, treatment no less favourable than that which, in like circumstances, it grants to investors of any third State.

(3) Subparagraph (3)(b) of Article II and paragraphs (1) and (2) of this Article do not apply to treatment by a Contracting Party pursuant to any existing or future bilateral or multilateral agreement:

(a) establishing, strengthening or expanding a free trade area or customs union or an interim agreement leading to the formation of a free trade area or customs union of which either Contracting Party is or may become a member;

(b) negotiated within the framework of the GATT or its successor organization and liberalizing trade in services; or

(c) relating to:

(i) aviation;

(ii) telecommunications transport networks and telecommunications transport services;

(iii) fisheries;

(iv) maritime matters, including salvage; or

(v) financial services.

(d) relating wholly or mainly to taxation, in accordance with, and subject to the provisions of Article XII.

ARTICLE IV

NATIONAL TREATMENT AFTER ESTABLISHMENT AND EXCEPTIONS TO NATIONAL TREATMENT

(1) Each Contracting Party shall grant to investments or returns of investors of the other Contracting Party treatment no less favourable than that which, in like circumstances, it grants to investments or returns of its own investors with respect to the expansion, management, conduct, operation and sale or disposition of investments.

(2) Subparagraph (3)(a) of Article II, paragraph (1) of this Article, and paragraphs (1) and (2) of Article IV do not apply to:

(a)

(i) any existing maintained within Contracting Party; and

(ii) any measure maintained or adopted after the date of entry into force of this Agreement, that, at the time of sale or other disposition of a government's equity interests in, or the assets of, an existing state enterprise or an existing governmental entity, prohibits or imposes limitations on the ownership of equity interests or assets or imposes nationality requirements

relating to senior management or members of the board of directors;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a);

(c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with those obligations;

(d) the right of each Contracting Party is to make or maintain exceptions within the sectors or matters listed in Section 1 of the Annex to this Agreement.

ARTICLE V OTHER MEASURES

(1)

(a) A Contracting Party may not require that an enterprise of that Contracting Party, that is an investment under this Agreement, appoint to senior management positions individuals of any particular nationality.

(b) A Contracting Party may require that a majority of the board of directors, or any committee thereof, of an enterprise constituted or organized under the laws of that Contracting Party that is an investment under this Agreement be of a particular nationality, or resident in the territory of the Contracting Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

(2) Neither Contracting Party may impose any of the following requirements in connection with permitting the establishment or acquisition of an investment or enforce any of the following requirements in connection with the subsequent regulation of that investment:

(a) to export a given level or percentage of goods;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(e) to transfer technology, a production process or other proprietary knowledge to a person in its territory unaffiliated with the transferor, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority, either to remedy an alleged violation of competition laws or