

April 07, 1994

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE REPUBLIC OF KOREA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of the Philippines and the Government of the Republic of Korea (hereinafter referred to as the "Contracting Parties ") ;

Bearing in mind the friendly and cooperative relations existing between the two States and their peoples;

Intending to create favourable conditions for investments by nationals and companies of one State in the territory of the other State on the basis of sovereign equality and mutual benefit; and

Recognizing the need to promote and protect such investments with a view to fostering the economic prosperity of both States,
Have agreed as follows :

**ARTICLE 1
PROMOTION OF INVESTMENTS**

Each Contracting Party shall promote in its territory as far as possible the investments by nationals and companies of the other Contracting Party and admit such investments within the framework of this Agreement and subject to the laws and regulations in each State.

**ARTICLE 2
DEFINITIONS**

For the purpose of this Agreement :

a) The term "national" means :

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

(ii) with respect to the Republic of Korea, physical persons who are deemed to be nationals of the Republic of Korea in accordance with its laws:

b) The term " companies" means :

(i) With respect to the Republic of the Philippines, corporations, partnerships or other associations, incorporated or constituted and actually doing business under its laws in force in any part of the territory of the Republic of the Philippines where in a place of effective management is situated.

(ii) With respect to the Republic of Korea, juridical persons or companies or associations, whether or not with limited liability and whether or not for pecuniary profit, incorporated in the territory of the Republic of Korea and existing in accordance with its laws.

c) The term "investments" means every kind of assets and in particular, though not exclusively includes:

(i) movable and immovable property and other property rights such as mortgages, liens or pledges;

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

(iii) claims to money or to any performance under contract having financial value;

(iv) intellectual property rights and goodwill; and

(v) any business concessions which have been or may be granted by the Contracting Parties in accordance with their respective laws, including concessions to search for, cultivate, extract or exploit natural resources:

d) The term " returns " means the amounts yielded by an investment for a definite period of time and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties or fees.

e) The term "territory" means:

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

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

ARTICLE 3 TREATMENT

1. Each Contracting Party shall in its territory accord to investments or returns of investments of nationals or companies of the other Contracting Party treatment not less favourable than that which it accords to investments or returns of nationals or companies of any Third State.

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

3. Notwithstanding paragraphs 1 and 2 of this Article, each Contracting Party shall accord, in accordance with its laws and regulations, to the nationals or companies of the other Contracting Party treatment not less favourable than that which it accords to its own nationals or companies.

4. The provisions of paragraph 1, 2 and 3 of this Article shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of :

a) any existing or future customs union, free trade area, common external tariff area, monetary union, or similar international agreement including the organization for mutual economic assistance or other forms of regional cooperation to which either of the Contracting Parties is or may become a party, or

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

ARTICLE 4 COMPENSATION FOR LOSSES

Investors of a Contracting Party, whose investments in the territory of the other Contracting Party suffered losses owing to war or armed conflict, state of emergency or other similar events shall, as regards compensation or other forms of settlement, be accorded by the other Contracting Party treatment not less favorable than that which the Contracting Party accords to its own investors or to investors of any Third State.

ARTICLE 5 EXPROPRIATION

1. Each Contracting Party shall not take measures of expropriation, nationalization or dispossession, either direct or any measure equivalent thereto against investments belonging to nationals or companies of the other Contracting Party, unless the measures are taken in the public interest, public use or in the interest of national defense on a non-discriminatory basis and under due process of law and upon payment of just compensation.

2. Such compensation shall amount to the market value of the expropriated investment immediately before the impending expropriation becomes public knowledge. The compensation shall be made without undue delay and shall be effectively realizable and freely transferable.

ARTICLE 6 TRANSFER OF INVESTMENT

Recognizing the principle of the freedom of transfer, each Contracting Party, within the scope of its existing laws and regulations, shall authorize, in conformity with its relevant most favourable rules, the transfer out of its territory without undue restriction and delay in any freely convertible currency of payments resulting from investment activities and in particular of the following items :

a) net profits, interest, dividends and other current income ;