

March 03, 1964

TREATY ON INVESTMENTS BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE FEDERAL REPUBLIC OF GERMANY

Note: The Agreement entered into force, March 3, 1964.

THE REPUBLIC OF THE PHILIPPINES
AND
THE FEDERAL REPUBLIC OF GERMANY

DESIRING to intensify economic cooperation between both States,

INTENDING to create favourable conditions for investments by nationals and companies of either State in the territory of the other State, and

RECOGNIZING that contractual protection of such investments will stimulate private business initiative and increase the prosperity of both nations,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Each Contracting Party shall in its territory promote as far as possible investments of nationals or companies of the other Contracting Party and shall endeavour to admit such investments in accordance with its constitution, laws and regulations. It shall accord such investments fair and equitable treatment.

ARTICLE 2

(1) Investments owned by, or under the effective control of, nationals or companies of either Contracting Party in the territory of the other Contracting Party shall not be accorded by that party treatment less favourable than it accords to any other similar investment in its territory.

(2) Neither Contracting Party shall subject activities of nationals or companies of the other Contracting Party in connection with their investments, as well as the management, use or enjoyment of such investments, to conditions less favourable than it imposes on activities in connection with any other similar investment in its territory.

ARTICLE 3

(1) Investments of nationals or companies of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

(2) The investments of nationals or companies of either Contracting Party in the territory of the other Contracting Party shall not be expropriated except for the public benefit and against compensation. Such compensation shall represent the equivalent of the investment affected at the time of expropriation; it shall be actually realizable, freely transferable, and shall be made without delay. Adequate provision shall have been made at or prior to the time of the deprivation for the determination and the giving of such compensation. The legality of any such

deprivation and the amount of compensation shall be subject to review by due process of law.

(3) Nationals or companies of either Contracting Party who owing to war or other armed conflict, revolution or revolt in the territory of the other Contracting Party suffer the loss of investments situated there, shall be accorded treatment no less favourable by such other Contracting Party than that party accords to any other similar investment in its territory as regards restitution, indemnification, compensation or other valuable consideration. With respect to the transfer of such payments each Contracting Party shall accord to the requests of nationals or companies of the other Contracting Party a treatment no less favourable than is accorded to comparable requests made by nationals or companies of any third State.

(4) The provisions of paragraphs (1), (2) and (3) above shall likewise apply to returns from investments.

(5) The nationals and companies of either Contracting Party shall enjoy most-favoured nation treatment in the territory of the other Contracting Party in respect of the matters provided for in the present Article.

ARTICLE 4

Either Contracting Party shall guarantee to the nationals or companies of the other Contracting Party the transfer of the capital, of the returns from it and, in the event of liquidation, of the net proceeds from such liquidation.

ARTICLE 5

If a claim arising out of a guarantee given for an investment is asserted against a Contracting Party, the latter shall, without prejudice to its rights under¹ Article 10, be authorized on the conditions stipulated by its predecessor in title to exercise the rights having been assigned to such party by law or having been ceded to it by the predecessor in title (devolved interest). As regards the transfer of payments to be made by virtue of the devolved interest to the Contracting Party concerned, paragraph (2), (4) and O) of Article 3 as well as Article 4 shall apply *mutatis mutandis*.

ARTICLE 6

(1) To the extent that those concerned have not made another arrangement admitted by the appropriate agencies of the Contracting Party in whose territory the investment is situated, transfers under paragraphs (2), (3) or (4) of Article 3, under Article 4 or Article 5 shall be made without delay and at the rate of exchange effective for current transactions on the day the transfer is made.

(2) The rate of exchange effective for current transactions shall be based on the par value agreed with the International Monetary Fund and shall lie within the margins above or below the party admitted under Section 3 of Article IV of the Articles of Agreement on the International Monetary Fund.

(3) If at the date of transfer no rate of exchange within the meaning of paragraph (2) above exists in respect of the Contracting Party concerned* the official rate fixed by such Contracting Party for its currency in relation to the US dollar or to another freely convertible currency or to gold shall be applied. If no such rate has been

fixed, the appropriate agencies of the Contracting Party in whose territory the capital is invested shall admit a rate of exchange that is fair and equitable.

ARTICLE 7

If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties in addition to the present Treaty result in a position entitling investments of nationals or companies of the other Contracting Party to a treatment more favourable than is provided for by the present Treaty, such position shall not be affected by the present Treaty. Either Contracting Party shall observe any other obligation it may have entered into with regard to investments within its territory by nationals or companies of the other Contracting Party.

ARTICLE 8

(1) The term "investment" shall comprise every kind of asset, and more particularly, 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 or other kinds of interest in companies;
- (c) titles to money or to any performance having an economic value;
- (d) copyrights, industrial property rights, technical processes, trade-names, and goodwill;
- (e) business concessions under public law.

Any alteration of the form in which assets are invested shall not affect their classification as investment, provided that such alteration is not contrary to the admission, if any, granted in respect of the assets originally invested.

(2) The term "returns" shall mean the amounts yielded by an investment as net profit or interest for a specific period.

(3) The term "nationals" shall mean:

- (a) in respect of the Federal Republic of Germany: Germans within the meaning of the Basic Law for the Federal Republic of Germany ;
- (b) in respect of the Republic of the Philippines: citizens of the Philippines within the meaning of Article IV of the Constitution of the Republic of the Philippines.

(4) The term "companies" shall mean

- (a) in respect of the Federal Republic of Germany: any juristic 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 and lawfully existing consistent with legal provisions, irrespective of whether the liability of its partners, associates or members is limited or unlimited and whether or not its activities are directed at profit;

(b) in respect of the Republic of the Philippines: any juristic person as well as any commercial or other company or association with or without legal personality, having its seat in the territory of the Republic of the Philippines and lawfully existing consistent with legal provisions, irrespective of whether the liability of its partners, associates or members is limited or unlimited and whether or not its activities are directed at profit.

ARTICLE 9

The present Treaty shall also apply to investments made prior to its entry into force by nationals or companies of either Contracting Party in the territory of the other Contracting Party in accordance with the latter's legislation. This provision shall not affect the Agreement of 27 February 1953 on German External Debts.

ARTICLE 10

(1) Disputes concerning the interpretation or application of the present Treaty should, if possible, be settled by the Government of the two Contracting Parties.

(2) If a dispute cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such arbitral tribunal shall be constituted for each individual case as follows: each Contracting Party appointing one member, and these two members shall then agree upon a national of a third State as their chairman to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within two months, and such chairman within three months, after either Contracting Party has made known to the other Contracting Party that it wants the dispute to be submitted to an arbitral tribunal.

(4) If the period specified in paragraph (3) have not been observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President should make the necessary appointments. If the Vice-president is a national of either Contracting Party or if he, too, is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party should make the necessary appointments.

(5) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding. Each Contracting Party shall bear the cost of its own member and of its counsel in the arbitral proceedings; the fee of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal may make a different regulation concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

ARTICLE 11

The provisions of the present Treaty shall remain in force also in the event of any conflict arising between the Contracting Parties, without prejudice to the right of taking such temporary measures as are permitted under the general rules of international law. Measures of this kind shall cease to exist not later than on the