Bilateral Investment Treaty between Italy and Philippines

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE REPUBLIC OF ITALY CONCERNING THE ENCOURAGEMENT AND THE RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of the Philippines and the Government of the Republic of Italy, hereinafter referred to as "the Contracting Parties";

DESIRING TO intesify economic cooperation between both countries;

INTENDING to create favourable conditions for investments by investors of either country; and

RECOGNIZING that encouragement and protection of such investments will benefit the economic prosperity of both countries.

HAVE AGREED AS FOLLOWS:

ARTICLE I

Each Contracting Party shall promote as far as possible the investments in its territory by investors of the other Contracting Party, admit such investments according to its laws and regulations and accord such investments equitable and reasonable treatment.

ARTICLE II

For the purpose of this Agreement:

(1) The term "investment" means any kind of asset accepted in accordance with the respective laws and regulations of either Contracting Party, and more particularly, though not exclusively

(a) movable and immovable property as well as

Text provided by the Department of Foreign Affairs, the Philippines.

any other rights in rem, such as mortgages, liens, pledges, usufructs and similar rights;

(b) shares, stocks and debentures of companies or interests 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) copyrights, industrial property rights, technical process, know-how, trademarks and trade names;

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

Any admitted alteration of the form in which assets are invested shall not affect their classification as an investment.

(2) The term "returns" means the amounts yielded by an investments for a definite period of time as profits, interests, capital gains, dividends, royalties, fees and other legitimate returns.

(3) The term "investor" means a citizen of each of the Contracting Parties under their respective laws or a corporation, partnership or other association incorporated or constituted in conformity with national legislation including interest association, irrespective of whether their responsibility is limited or not, whose seat and management is in the territory of the respective Contracting Parties.

(4) The term "territory" means, in addition to the land within its boundary limits, also the territorial sea. The latter includes the territorial waters and the subsoil below such waters, upon which the Contracting Parties exercise their sovereignty, sovereign rights, or jurisdictional rights, in accordance with international law.

ARTICLE III

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

(2) Each Contracting Party shall in its territory accord investors 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 investors of any third State.

(3) The treatment mentioned above shall not apply to any advantage accorded to investors of a third State by either Contracting Party based on the membership of that Contracting Party in an existing or future Customs Union, Common Market, Free Trade Zone, regional economic cooperation, economic multilateral international Agreement or based on an Agreement concluded between that Contracting Party and a third State on avoidance or double taxation, or for facilitation of frontier trade or any domestic legislation relating wholly or mainly to taxation.

ARTICLE IV

(1) Investments or returns of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having an effect equivalent to nationalization or expropriation, inter alia legally independent measures of dispossession or taking, (all hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for public use or for public interest, including national welfare or defense, and against prompt adequate and effective compensation, provided that such measures are taken on a non-discrimatory basis and in accordance with law.

(2) Such compensation shall amount to the market value of the

investments affected immediately before the measure of expropriation occured became public knowledge and shall be made without undue delay, be effectively realizable and be freely transferable.

ARTICLE V

Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war, other armed conflicts, or to other incidents considered as such by international law, shall be accorded by the latter Contracting Party treatment no less favourable than that which this Party accords to investors of any third State with regard to restitution, indemnification or compensation. Resulting payments shall be freely transferable.

ARTICLE VI

Each Contracting Party shall, within the scope of its laws and regulations, ensure the free transfer of investments, the returns thereof as well as the total or partial liquidation of the investment. Moreover the earnings of nationals of a Contracting Party derived from their work and services in connection with an investment in the territory of the other Contracting Party, after payment of taxes and deduction of their living expenses spent there in accordance with such Contracting Party's laws and regulations, shall be freely transferable to the investor's country.

ARTICLE VII

In case one Contracting Party has granted any guarantee against non-commercial risks with respect to an investment by its investor in the territory of the other Contracting Party and has made payment to such investor under the guarantee, the other Contracting Party shall recognize the transfer of the rights of such investor to the one Contracting Party and the subrogation of the one Contracting Party shall not exceed the original rights of such investors. As regards to the transfer of payments to be made to the Contracting Party by virtue of such subrogation, Articles 4, 5 and 6 shall apply respectively. This does not necessarily imply, however, a recognition on the part of the latter Contracting Party of the

merits of any case or of the amount of any claim arising therefrom.

ARTICLE VIII

Transfers as stipulated in Articles 4, 5, 6 and 7 shall be made without undue delay, in accordance with their respective national laws and regulations and consistent with their obligations with the International Monetary Fund, after the performance of the fiscal burdens. Such transfers shall be made in freely convertible currency at the official rate of exchange existing on the date the transfer is made.

ARTICLE IX

(1) All kinds of disputes or differences, including disputes over the amount of compensation for expropriation, nationalism or similar measures, between one Contracting Party and an investor of the other Contracting Party concerning an investment of that investor in the territory shall be settled amicably through negotiations.

(2) If such disputes or differences cannot be settled according to the provisions of paragraph (1) of this Article within six months from the date of request for settlement, the investor concerned may submit the dispute to:

(a) the competent court of the Contracting Party for decision; or

(b) the International Center for the Settlement of Investments Disputes through conciliation or arbitration, established under the Convention on the Settlement of Investments Disputes between States and Nationals of other States, of March 18, 1965 done in Washington D.C.

(3) Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and a Contracting Party has failed to abide by or

to comply with the award rendered by the International Center for the Settlement of Investment Disputes.

ARTICLE X

(1) Disputes between the Contracting Party concerning the interpretation and application of this Agreement shall be settled, as far as possible, through friendly consultation by both Parties through diplomatic channels.

(2) If such disputes cannot be settled within six months from the date on which either Contracting Party informs in writing the other Contracting Party, they shall, at the request of either Contracting Party, be submitted for settlement to an ad hoc international arbitral tribunal.

(3) The ad hoc international arbitral tribunal mentioned above shall be established as follows: The arbitral tribunal is composed of three arbitrators. Each Contracting Party shall appoint one arbitrator; the two arbitrators shall propose by mutual agreement the third arbitrator who is a national of a third State which has diplomatic relations with both Contracting Parties, and the third arbitrator shall be appointed as the Chairman of the tribunal by both Contracting Parties.

(4) If the appointments of the members of the Arbitral Tribunal are not made within a period of six months from the date of request for arbitration, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments within three months. Should the President be a national of one Contracting Party, or should he not be able to perform this designation because of other reasons, this task shall be entrusted to the Vice-President of the Court, or to the next senior Judge of the Court who is not a national of either Contracting Party.

(5) The Arbitral Tribunal shall determine its own procedure. The Arbitral Tribunal shall decide its award by a majority of votes. Such award is final and binding upon the two Contracting Parties.

(6) Each Contracting Party shall bear the cost of its own member and of its counsel in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties.

ARTICLE XI

The provisions of the present Agreement shall apply irrespectiv of the existence of diplomatic or consular relations between the two Contracting Parties.

ARTICLE XII

(1) The present Agreement shall enter into force three months after the notification between the Contracting Paties of the accomplishment of their respective internal procedures for the entry into force of the Agreement. It shall remain in force for a period of ten years and shall continue in force thereafter for another period of five years and so forth unless denounced in writing by either Contracting Pary one year before its expiration.

(2) In respect to investments made prior to the date of termination of the present Agreement, its provisions shall continue to be effective for a further period of five years from the date of termination of the present Agreement.

Done in triplicate at ROME on 17 JUNE 1988 in Pilipino, Italian and English languages, all texts being equally authentic. In case of any divergency of interpretation, the English text shall prevail.

For the Government of the Republic of the Philippines

For the Government of the Republic of Italy

PROTOCOL

On signing the Agreement concerning the encouragement and the reciprocal protection of investments between the Republic of the Philippines and the Republic of Italy, the undersigned plenipotentiaries have, in addition, agreed on the following provisions which should be regarded as an integral part of the said Agreement:

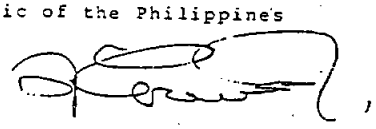
(1) With respect to Article 2 on the coverage of investments, this Agreement shall apply, with respect to the Republic of the Philippines, to investments which are qualified for registration and are duly registered with the Central Bank of the Philippines and other appropriate government agencies;

(2) With respect to Article 4, compensation for expropriated property shall include interest at the prevailing commercial rate in the country from the date of actual taking of the expropriated property until the date of payment

(3) This Agreement shall apply to investments made prior to this Agreement, provided that such investments have been made in accordance with the respective laws and regulations of both Contracting Parties at the time the investments were made, and with the registration requirements mentioned in paragraph (1).

The above notwithstanding, this Agreement shall not affect the rights and obligations of the Contracting Parties with respect to investments which, under the provision of the preceding paragraph, are not within the scope of this Agreement.

For the Government of the
Republic of the Philippines



For the Government of the
Republic of Italy