AGREEMENT[1] BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FRANCE AND THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of France and the Government of the Republic of the Philippines hereinafter referred to as the Contracting Parties,

Desiring to strengthen the economic cooperation between both States and to create favourable conditions for French investments in the Philippines and Philippine investments in France,

Convinced that the promotion and protection of these investments would succeed in stimulating transfers of capital and technology between the two countries in the interest of their economic development,

Have agreed as follows:

ARTICLE 1

For purposes of this Agreement:

1. The term "investment" means every kind of goods, rights and interest of whatever nature, in particular though not limited to the following:

a) Movable and immovable property as well as any other right in rem such as mortgages, liens, usufruct, pledges and similar rights;

b) Shares, stocks and debentures of a company constituted in the territory of one Contracting Party and any other form of interest in a company, including premium on share, minority or indirect holdings;

c) Title to money or debentures, or title to any legitimate performance having an economic value;

d) Copyrights, industrial property rights (such as patents, licenses, trademarks, industrial models and mockups), technical processes, tradenames and goodwill;

e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources which are located in the territory of the Contracting Parties.

[1] Came into force on 13 June 1996 by notification, in accordance with article 12.

It is understood that those investments are investments which have already been made or may be made subsequent to the entering into force of this Agreement in the territory of a Contracting Party in accordance with the legislation of that Contracting Party.

Any alteration of the form in which assets are invested shall not affect their qualification as investments provided that such alteration is not in conflict with the legislation of the Contracting Party in the territory of which the investment is made.

2. The term "nationals" means physical persons possessing the nationality of either Contracting Party.

3. The term "company" means any legal person constituted on the territory of one Contracting Party in accordance with the legislation of that Party, having its head office on the territory of that Party, or controlled directly or indirectly by the nationals of one Contracting Party, or by legal persons having their head office in the territory of one Contracting Party and constituted in accordance with the legislation of that Party.

4. The term "returns" means all amounts produced by an investment, such as profits, interests, capital gains, dividends, royalties, fees and other legitimate returns.

Investment returns and, in case of re-investment, re-investment returns shall enjoy the same protection as the investment.

5. This Agreement shall apply to the territory of each Contracting Party. The term "territory" means:

a) with respect to the Republic of the Philippines, the national territory which comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial, and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines;

b) with respect to the Republic of France, the territory of the Republic of France, which, for the purpose of this Agreement includes the maritime area, hereafter defined as the economic zone and the continental shelf outwards the territorial sea over which it has in accordance with International Law sovereign rights and a jurisdiction with a view to prospecting, exploiting and preserving natural resources.

ARTICLE 2

Each Contracting Party shall admit and encourage in its territory, in accordance with its legislation and with the provisions of this Agreement, investments made by nationals or companies of the other Contracting Party.

ARTICLE 3

Either Contracting Party shall extend fair and equitable treatment in accordance with the principles of International Law to investments made by nationals and companies of the other Contracting Party in its territory, and shall ensure that the exercise of the right thus recognized shall not be hindered.

Any unfair restriction on the purchase or transport of raw materials and auxiliary materials, energy and fuels, as well as the means of production and operation of all types, any hindrance of the sale, or transport of products within the country and abroad, as well as any other measures that have a similar effect, shall be considered as de jure or de facto impediments to fair and equitable treatment.

Within the framework of their internal legislation, the Contracting Parties shall favourably examine requests for entry and authorization to reside, work and travel made by the nationals of one Contracting Party in relation to an investment made on the territory of the other Contracting Party.

ARTICLE 4

Each Contracting Party shall apply in its territory to the nationals and companies of the other Party, with respect to their investments which are made in accordance with the legislation of that Contracting Party and activities related to such investments, a treatment not less favourable than that granted to its nationals or companies, or the treatment granted to the nationals or companies of the most favoured nation, if the latter is more favourable. In this respect, nationals authorized to work on the territory of one Contracting Party shall enjoy the material facilities, relevant to the exercise of their professional activities.

The provisions of the preceding paragraph 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, or regional economic organization of 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 5

1. The investments made by nationals or companies of one Contracting Party shall enjoy full and complete protection and safety in the territory of the other Contracting Party.

2. Neither Contracting Party shall take any measures of expropriation or nationalization or any other measure having the affect of dispossession, direct or indirect, of nationals or companies of the other Contracting Party of their investments in its territory, except in the public interest and provided that these measures are not discriminatory or contrary to a particular obligation.

Any measure of dispossession which might be taken shall give rise to prompt and adequate compensation, the amount of which shall be calculated on the basis of the value of the investments concerned immediately before the intention of dispossession becomes of public knowledge.

The said compensation, the amounts and conditions of payments, shall be set not later than the date of dispossession. This compensation shall be effectively realizable, shall be paid without delay and shall be freely transferable.

3. Nationals or companies of one Contracting Party whose investments have sustained losses due to war or any other armed conflict, revolution, national state of emergency or revolt occurring in the territory of the other Contracting Party, shall enjoy treatment from the latter Contracting Party that is not less favourable than that granted to its own nationals or companies or to those of the most favoured nation.

ARTICLE 6

Each Contracting Party, in the territory of which the investments have been made by nationals or companies of the other Contracting Party, shall guarantee to these nationals and companies the free transfer of investments which have been duly registered by its appropriate government agencies, if so required by its laws, and in particular, though not exclusively, shall guarantee the free transfer of:

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

b) royalties deriving from incorporal rights as defined in Article 1 Section 1 (d) and (e);

c) repayments of loans which have been regularly contracted;

d) value of partial or total liquidation or disposition of the investment, including capital gains on the capital invested;

e) compensation for dispossession or loss described in Article 5 Sections 2 and 3 above.

The nationals of either Contracting Party, who have been authorized to work in the territory of the other Contracting Party as the result of an approved investment, shall also be permitted to transfer to their country of origin an appropriate proportion of their earnings.

The transfers referred to in the foregoing paragraphs shall be promptly effected at the official exchange rate prevailing on the date of transfer.

ARTICLE 7

In the event that the regulations of one Contracting Party contain a guarantee for investments made abroad, this guarantee may be accorded, after examining case by case, to investments made in the territory of the other Party by nationals or companies of this Party.

Investments made by nationals or companies of one Contracting Party in the territory of the other Contracting Party may obtain the guarantee referred to in the foregoing paragraph only if they have been previously agreed to by the other Party.

ARTICLE 8

Any dispute concerning the investments occurring between one Contracting Party and a national or company of the other Contracting Party shall be settled amicably between the two parties concerned.

If this dispute has not been settled within a period of six months from the date at which it has been raised by one or other of the parties to the dispute, the Contracting Party which is party to the dispute shall assent to any request on the part of the national or company party to the dispute to submit it; for conciliation or arbitration, to the International Centre for the Settlement of Investment Disputes (ICSID), created by the Convention for the settlement of disputes in respect of investments occurring between States and nationals of other States signed in Washington on March 18, 1965.[1]

[1] United Nations, *Treaty Series*, vol. 575, p. 159.

ARTICLE 9

If one Contracting Party, as a result of a guarantee given for an investment made in the territory of the other Contracting Party, makes payments to its own nationals or companies, the first mentioned Party has in this case full rights of subrogation with regard to the rights and actions of the said national or company.

The said payments shall not affect the rights of the beneficiary of the guarantee to recourse to the ICSID or to continue proceedings submitted to it until completion of the proceedings.

ARTICLE 10

Investments having formed the subject of a special commitment of one Contracting Party, with respect to the nationals or companies of the other Contracting Party, shall be governed, without prejudice to the provisions of this Agreement, by the terms of the said commitment if the latter includes provisions more favourable than those of this Agreement.

ARTICLE 11

1. Disagreements relating to the interpretation or application of this Agreement shall be settled, if possible, by diplomatic channels.

2. If the disagreement has not been settled within a period of six months from the date on which the matter was raised by either Contracting Party, it may be submitted at the request of either Contracting Party to an Arbitral Tribunal.

3. The said Tribunal shall be created as follows for each specific case:

Each Contracting Party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint by mutual agreement a third arbitrator, who must be a national of a third Country, and who shall be designated as Chairman of the Tribunal by the two Contracting Parties. All the arbitrators must be appointed within three months from the date of notification by one Contracting party to the other Contracting Party of its intention to submit the disagreement to arbitration.

4. If the periods specified in Article 11 Section 3 above have not been met, either Contracting Party, in the absence of any other agreement, shall invite the Secretary General of the United Nations Organization to make the necessary appointments. If the

Secretary General is a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the Under-Secretary next in seniority to the Secretary General, who is not a national of either Contracting Party, shall make the necessary appointments.

5. The tribunal shall reach its decisions by a majority of votes. These decisions shall be final and legally binding upon the Contracting Parties.

The Tribunal shall set its own rules of procedures. It shall interpret the judgment at the request of either Contracting party. Unless otherwise decided by the tribunal, in accordance with special circumstances, the legal costs, including the fees of the arbitrators, shall be shared equally between the two Contracting Parties.

ARTICLE 12

Each Party shall notify the other of the completion of the constitutional procedures required concerning the entry into force of this Agreement, which shall enter into force one month after the date of receipt of the final notification.

The Agreement shall be in force for an initial period of ten years. It shall remain in force thereafter, unless one of the Contracting Parties gives one year's written notice of termination through diplomatic channels.

In case of termination of the period of validity of this Agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for an additional period of twenty years.

SIGNED in Paris, on September 13, 1994, in duplicate in the French and English languages, both texts being equally authentic.

For the Government of the Republic of France:

EDMOND ALPHANDÉRY

For the Government of the Republic of the Philippines:

RIZALINO S. NAVARRO

PROTOCOL

At the signing of the Agreement between the Governement of the Republic of France and the Government of the Republic of the Philippines on the reciprocal promotion and protection of investments, the two Contracting Parties have also agreed upon the following provisions which form an integral part of the said Agreement.

With respect to Article 4 :

The provisions of this Article shall not be construed so as to oblige the Republic of the Philippines to extend to the nationals or companies of France the benefit of any treatment, preference or privilege granted to nationals or companies of the Republic of the Philippines pursuant to :

- the pertinent provisions of Article XII of the Constitution of the Republic of the Philippines on land ownership ;

- Central Bank circular n°572, Series 1977, dated July 27, 1977, on domestic borrowing, as amended as of October 1, 1993.

With respect to Article 5 :

The compensation for dispossession described in Article 5 shall include interest at the prevailing commercial rate in the country from the date of dispossession until the date of payment.

For the Government of the Republic of France:

EDMOND ALPHANDÉRY

For the Government of the Republic of the Philippines:

RIZALINO S. NAVARRO