The Protocol Amending the Agreement between the Republic of the Philippines and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income Signed in Manila on 2 October 1976 was signed in Manila on March 11, 1996. It entered into force on December 24, 1999, the thirtieth day following the exchange of the relevant instruments of ratification in Brussels, Belgium on November 24, 1999. Its provisions on taxes apply on income derived or which accrued beginning January 1, 2000.

PROTOCOL AMENDING THE AGREEMENT

BETWEEN

THE REPUBLIC OF THE PHILIPPINES

AND

THE KINGDOM OF BELGIUM

FOR THE AVOIDANCE OF DOUBLE TAXATION

AND THE PREVENTION OF FISCAL EVASION

WITH RESPECT TO TAXES ON INCOME

SIGNED IN MANILA ON 2 OCTOBER 1976

The Government of the Republic of the Philippines and the Government of the Kingdom of Belgium,

Desiring to conclude a Protocol to amend the Agreement between the Republic of the Philippines and the Kingdom of Belgium for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed in Manila on 2 October 1976 (hereinafter referred to as “the Agreement”),

Have agreed as follows:

Article I

Article 2 of the Agreement is amended by substituting paragraph 3 with the following:
“3. The existing taxes to which the Agreement shall apply are in particular:

a) in the Philippines:

the income tax imposed under Title II and the stock transaction tax in accordance with Section 124-A of the National Internal Revenue Code of the Republic of the Philippines,
(hereinafter referred to as ‘Philippine tax’);

b) in Belgium:

(i) the individual income tax;
(ii) the corporate income tax;
(iii) the income tax on legal entities;
(iv) the income tax on non-residents;
(v) the special levy assimilated to the individual income tax;
(vi) the supplementary crisis contribution,
including the prepayments, the surcharges on these taxes and prepayments,
and the supplements to the individual income tax,
(hereinafter referred to as ‘Belgian tax’).”

Article II

Article 3 of the Agreement is amended by substituting subparagraphs (a) and (b) of paragraph 1, with the following:

“a) the term ‘Philippines’ mean the Republic of the Philippines; used in a geographic sense, it means the archipelagic territory comprising the Republic of the Philippines as defined in its Constitution and laws, including adjacent areas and such other areas as the territorial sea, other areas in the sea and in the air within which the Philippines has sovereignty, jurisdiction or similar rights under international law;

b) the term ‘Belgium’ means the Kingdom of Belgium; used in a geographical sense, it means the territory of the Kingdom of Belgium, including the territorial sea and any other area in the sea and in the air within which the Kingdom of Belgium, in accordance with international law, exercises sovereign rights or its jurisdiction;”

Article III

Article 10 of the Agreement is amended by substituting paragraphs 2, 3 and 4 with the following:

“2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of
Belgium

that State, but if the beneficial owner of the dividends is a resident of the other Contracting State the tax so charged shall not exceed:

a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent of the capital of the company paying the dividends;

b) 15 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term ‘dividends’ as used in this Article means income from shares, ‘jouissance’ shares or ‘jouissance’ rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income – even paid in the form of interest – which is treated as income from shares by the tax legislation of the State of which the paying company is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply."

Article IV

Article 11 of the Agreement is substituted with the following:

“Article II

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest shall be exempted from tax in the Contracting State in which it arises if it is:
a) interest paid in respect of a bond, debenture or other similar obligation of the Government of that Contracting State or of a political subdivision or local authority thereof; and
b) interest paid in respect of a loan made, guaranteed or insured or a credit extended, guaranteed or insured by such institution as is specified and agreed in letters exchanged between the competent authorities of the Contracting States.

4. The term ‘interest’ as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to or taxed in the same way as income from money lent by the taxation law of the State in which the income arises, including interest on deferred payments. However, the term ‘interest’ shall not include for the purpose of this Article interest regarded as dividends under paragraph 3 of Article 10.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.”
Article V

Article 12 of the Agreement is substituted with the following:

"Article 12
ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

3. The term ‘royalties’ as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess
part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.”

Article VI

Article 16 of the Agreement is substituted with the following:

“Article 16
DIRECTORS’ FEES

1. Directors’ fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

The preceding provision shall also apply to payments derived in respect of the discharge of functions which, under the laws of the Contracting State of which the company is a resident, are regarded as functions of a similar nature as those exercised by a person referred to in the said provision.

2. Remuneration derived by a person referred to in paragraph 1 from the company in respect of the discharge of day-to-day functions of a managerial or technical nature and remuneration received by a resident of a Contracting State in respect of his personal activity as a partner of a company, other than a company with share capital, which is a resident of the other Contracting State, may be taxed in the Contracting State where such resident exercises his activity.”

Article VII

Article 18 of the Agreement is substituted with the following:

“Article 18
PENSIONS AND SIMILAR PAYMENTS

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, payments received by a resident of a Contracting State under the social security legislation of the other Contracting State shall be taxable only in that other State.”
Belgium

Article VIII

Article 23 of the Agreement is substituted with the following:

“1. In the Philippines, in accordance with the provisions and subject to the limitations of the laws of the Philippines, as may be amended from time to time without changing the general principles hereof, double taxation shall be avoided in the following manner:

a) In accordance with the principles of this Agreement, taxes paid or accrued under the laws of Belgium, whether directly or by deduction, in respect of income from sources within Belgium shall be allowed as a credit against Philippine tax subject to the following limitations:

(i) the amount of credit in respect to the tax paid or accrued to Belgium shall not exceed the same proportion of taxes covered by the Agreement against which such credit is taken, which the taxpayer’s taxable income from sources within Belgium bears to his entire taxable income for the same taxable year; and

(ii) the total amount of the credit shall not exceed the same proportion of the taxes covered by the Agreement against which such credit is taken, which the taxpayer’s taxable income from sources without the Philippines bears to his entire taxable income for the same taxable year.

b) In the case of a Philippine corporation owning directly or indirectly more than 50 per cent of the voting stock of a Belgian company from which it receives dividends in any taxable year, the Philippines shall also allow credit for the appropriate amount of taxes paid or accrued to Belgium by a Belgian company paying such dividends with respect to such profits out of which such dividends are paid. The deduction shall not, however, exceed that part of the Philippine income tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Belgium.

2. In the case of Belgium, double taxation shall be avoided as follows:

a) Where a resident of Belgium derives income which is taxed in the Philippines in accordance with the provisions of this Agreement, other than those of paragraph 2 of Article 10, of paragraphs 2 and 7 of Article 11 and of paragraphs 2 and 6 of Article 12, Belgium shall exempt such income from tax but may, in calculating the amount of tax on the remaining income of that resident, apply the rate of tax which would have been applicable if such income had not been exempted.

b) (i) Subject to the provisions of Belgian law regarding the deduction from Belgian tax of taxes paid abroad, where a resident of Belgium derives items of his aggregate income for Belgian tax purposes which are dividends taxable in accordance with paragraph 2 of Article 10, and not exempt from Belgian tax according to subparagraph (c)
hereinafter, interest taxable in accordance with paragraph 2 or 7 of Article 11, or royalties taxable in accordance with paragraphs 2 or 6 of Article 12, the Philippine tax levied on that income shall be allowed as a credit against Belgian tax relating to such income. (ii) Belgium shall also allow against its tax a credit with respect to dividends, interest and royalties derived by a resident of Belgium and included in the aggregate income for Belgian tax purposes of this resident, when Philippine tax may be charged on these items of income according to the provisions of the Agreement and the general law of the Philippines, but no Philippine tax is effectively levied under special and temporary measures which are designed to promote investments directly connected with development projects in the Philippines and which are agreed upon by the competent authorities of both Contracting States. Such credit shall be calculated at the rate of 10 per cent of the gross amount of the income, but shall not exceed that part of the Belgian tax, as computed before the credit is given, which is attributable to these items of income and shall only apply for the first ten years for which the Protocol amending the Agreement is effective.

c) Dividends within the meaning of paragraph 3 of Article 10, derived by a company which is a resident of Belgium from a company which is a resident of the Philippines, shall be exempt from the corporate income tax in Belgium under the conditions and within the limits provided for in Belgian law.

d) Where, in accordance with Belgian law, losses incurred by an enterprise carried on by a resident of Belgium in a permanent establishment situated in the Philippines, have been effectively deducted from the profits of that enterprise for its taxation in Belgium, the exemption provided for in sub-paragraph (a) shall not apply in Belgium to the profits of other taxable periods attributable to that establishment to the extent that those profits have also been exempted from tax in the Philippines by reason of compensation for the said losses."

Article IX

Article 28 of the Agreement is amended by deleting paragraph 1 and by renumbering paragraphs 2, 3, 4, 5 and 6 as paragraphs 1, 2, 3, 4 and 5.

Article X

1. This Protocol shall be ratified and the instruments of ratification shall be exchanged at ......................... as soon as possible.

2. The Protocol shall enter into force thirty days after the date of the exchange of the instruments of ratification and its provisions shall have effect:
Belgium

a) with respect to all taxes covered by the Agreement due at source on income credited or payable on or after 1 January of the year next following the year in which the instruments of ratification have been exchanged;

b) with respect to all taxes covered by the Agreement other than taxes due at source, on income of any accounting period beginning on or after 1 January of the year next following the year in which the instruments of ratification have been exchanged.

Article XI

This Protocol, which shall form an integral part of the Agreement, shall remain in force as long as the Agreement itself remains in force.

IN WITNESS WHEREOF, the undersigned duly authorised thereto, have signed this Protocol.

DONE in duplicate at Manila, Philippines on March 11, 1996 in the English language.

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FOR THE GOVERNMENT OF THE KINGDOM OF BELGIUM

(SGD.) ROBERTO F. DE OCAMPO (SGD.) KAREL PINXTEN