

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE UNION OF MYANMAR AND THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Union of Myanmar and the Government of the Republic of the Philippines hereinafter referred to as the Contracting Parties;

DESIRING to intensify economic cooperation between both STATES;

INTENDING to create favorable conditions for investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party, and increase prosperity in their respective territories;

RECOGNIZING that encouragement and protection of such investments will benefit the economic prosperity of both States;

HAVE AGREED AS FOLLOWS:

## **Article I. Promotion, Admission, and Protection of Investments**

1. Each Contracting Party shall promote as far as possible investments in its territory by nationals and companies of one Contracting Party and shall admit such investments in accordance with its Constitution, laws and regulations. Such investments shall be accorded equitable and reasonable treatment.
2. Investments by investors of one Contracting Party shall at all times enjoy full protection and security in the territory of the other Contracting Party. The said Contracting Party shall in no way by unreasonable or discriminatory measures impair the management, maintenance, use, enjoyment, or disposal of investments by investors of the other Contracting party.

## **Article II. Definition of Terms**

For the Purpose of this Agreement:

1. The term "investment" shall mean 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 other rights in rem, such as mortgages, Hens, pledges, usufructs and similar rights;
    - b) Shares of stocks and debentures of companies or interest 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 processes, 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 invented shall not be their classification as an investment.
2. The term "investors" shall mean:
    - a) Individuals who, with respect to the Republic of the Philippines, are citizens of the Philippines within the meaning of its Constitution, and with respect to the Union of Myanmar, are citizens of the Union of Myanmar, within the meaning of its existing laws.

b) With respect to both countries, legal entities, including companies, association of companies, trading corporate entities and other organizations that are incorporated or, in any event, are properly organized and actually doing business under the laws, of the respective Party and have their headquarters in the territory of the respective Party where effective management is carried out.

3. The term "territory" shall mean:

a) With respect to the Republic of the Philippines, the national territory as defined in Article I of its 1987 Constitution;

b) With respect to the Union of Myanmar, the Land, sea and air space which constitute its territory, as has been recognized and existing under the laws of the Union of Myanmar.

4. The term "nationals" shall mean:

a) With respect to the Republic of the Philippines, citizens of the Philippines within the meaning of Article IV of its Constitution.

b) With respect to the Union of Myanmar, citizens of the Union of Myanmar, within the meaning of its existing laws.

5. The term "companies" shall mean corporations, partnerships or other associations, incorporated or constituted and actually doing business under the laws in force in any part of the territory of that Contracting Party wherein a place of effective management is situated. Provided that any particular company may be excluded from the foregoing definition by mutual agreement between the Contracting Parties on the grounds of the need to maintain public order, to protect essential security interest or to fulfill commitments relating to peace and security.

6. The term "returns" means the amount yielded by an investment for a definite period of time as profits, interests capital gains, dividends, royalties, fees and other legitimate returns.

7. The term "market value" means the value of property immediately prior in the expropriation or immediately before it was publicly announced.

### **Article III. Treatment of Investments**

1. Each Contracting Party shall in its territory accord investments of nationals or companies of the other Contracting Party treatment not less favorable than that which accords to investments or return of investments of nationals or companies of any third State.

2. Each Contracting Party shall in its territory accord the nationals or companies of the other Contracting Party, as regard management, maintenance, use, enjoyment, or disposal of their investment, treatment not less favorable that which accords to nationals or companies of any third State.

3. The provisions of this Agreement relative to the grant of treatment not less favorable than that which accords to nationals or companies of any third State shall not be construed as to oblige one Contracting Party to extend to the nationals or companies of the other benefit of any treatment, preference or privilege resulting from:

a) Any existing or future customs union, common market, free trade area, or regional economic organization or measures leading to the foundation of a customs union or free trade area of which either Contracting Party is or may become a member, or

b) Any international agreement or arrangement relating wholly or mainly to taxation.

### **Article IV. 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 the 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 V. Compensation**

If a Contracting Party makes restitution, indemnification, compensation or other settlement for losses suffered owing to war, revolution, state of the nation emergency, revolt, insurrection, riot, or other armed conflicts in the territory of such Contracting Party, it shall accord to the nationals or companies of the other Contracting Party whose investments in the territory of the former have suffered such losses, treatment no less favorable than that which the Contracting Party shall accord to the nationals or companies of any third State. Resulting payments shall be freely transferable.

## **Article VI. Transfers**

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 investments of nationals or companies of the other Contracting Party subject however, to the right of the former Contracting Party to impose equitably and in good faith such measures as may be necessary to safeguard the integrity and independence of its currency, its external financial position and balance of payments.

Transfers as stipulated in Articles IV and V shall be made without undue delay, in accordance with their respective laws and regulations. Such transfers shall be made in freely convertible currency at the financial rate of exchange prevailing at the time of remittance.

## **Article VII. Subrogation**

In case one Contracting Party has granted any issuance or guarantee agreement against non-commercial risks in respect of an investment made by its own investors in the territory of the other Contracting Party and has made payments to such investors under the guarantee, the other Contracting Party shall recognize the transfer of the economic rights of the investors to the said Contracting Party. The subrogation will make it possible for one Contracting Party to receive payments for compensation that the investor would have been entitled to. This does not necessarily imply, however, a recognition on the part of the other Contracting Party of the merits of any case or the amount of any claim arising therefrom.

In respect of property rights or any other rights derived from ownership of the investment, subrogation will take place after the legal requirements of the host Contracting Party of the investment have been met.

## **Article VIII. Consultation**

The Contracting Parties agree to consult each other at the request of either Party on any matters relating to investment between the two countries, or otherwise affecting implementation of this Agreement.

## **Article IX. Settlement of Disputes between a Contracting Party and a National of Another Contracting Party**

1. All kinds of disputes or differences, including disputes over the amount of compensation for expropriation or similar measures, between a Contracting Party and a national or company of the other Contracting Party concerning an investment or return of investment of that national or company in the territory of the other 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 national or company concerned may submit the dispute to:

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

b) An ad hoc arbitral tribunal in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL)

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 competent body referred to in paragraph 2 (b) of this Article.

## **Article X. Settlement of Disputes between Contracting Parties**

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

2. If such disputes cannot be settled within six months from date on which either Contracting Party informs in writing the

other Contracting Party, the matter should 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 the third State which has diplomatic relations with both Contracting Parties, and the third arbitrator shall be appointed as 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 court 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 majority of votes. Such award is final and binding upon the Contracting Parties.

6. Each Contracting Party shall bear the cost of its own member of the panel and of its representative in the tribunal proceedings. The costs of the Chairman and remaining costs shall be borne in equal parts by the Contracting Parties.

## **Article XI. Application**

The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relation between the two Contracting Parties.

## **Article XII. Entry Into Force, Duration and Termination**

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

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

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE at Manila on the 17th day of February 1998, in two original texts in the English language, all texts being equally authentic.

FOR THE GOVERNMENT OF THE UNION OF MYANMAR

Brig-Gen D.OAbel

Minister

Office of the Chairman of the State Peace and Development Council

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

Cesar B. Bautista

Secretary of Trade and Industry