Agreement between The Government of the State of Israel and The Government of the Republic of the Philippines on Promotion and Protection of Investments

PREAMBLE

The Government of the State of Israel ("Israel") and the Government of the Republic of the Philippines ("Philippines") (hereinafter referred to individually as the "Party" and collectively as the "Parties");

Desiring to intensify the economic cooperation of both Parties, consistent with the framework of the Parties' respective laws, regulations and administrative orders, on the basis of equality and mutual benefit of the Parties;

Intending to create and maintain favorable conditions for investments by investors of a Party in the territory of the other Party;

Recognizing that the reciprocal promotion and protection of such foreign investments favor economic prosperity of both Parties;

Bearing in mind that any kind of investment should be made in good faith; and

Acknowledging each Party's right to protect its security, safety, environment and public interests within its territory;

Have agreed as follows:

Section A. Definitions

For purposes of this Agreement:

Claimant means an investor of a Party that is a party to an investment dispute with the other Party;

Covered investment means, with respect to a Party, an investment:

(a) in its territory, of an investor of the other Party;

(b) in existence as of the date of entry into force of this Agreement, or made or acquired thereafter, subject to its laws, regulations and administrative orders;

Disputing parties means both the claimant and the respondent;

Enterprise means any legal entity duly constituted or organized under the applicable laws, regulations and administrative orders of a Party, whether or not for profit, and whether private or government owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization or company;

Enterprise of a Party means an enterprise that is constituted or organized under the laws, regulations and administrative orders of a Party and has substantial business activities in the territory of that Party;

Freely usable currency means any freely usable currency designated as such by the International Monetary Fund (IMF) under its Articles of Agreement and any amendments thereto;

ICC means the International Chamber of Commerce;

ICC Arbitration Rules means the rules of arbitration of the ICC that entered into force on 1 January 2021;

ICSID means the International Centre for Settlement of Investment Disputes; ICSID Additional Facility Rules means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the ICSID;

ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, 18 March 1965;

Investment means every kind of asset made in accordance with the laws, regulations and administrative orders of the Party in whose territory the investment is made, that an investor owns or controls, directly or indirectly, and that has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(a) shares, stocks and any other forms of equity participation in an enterprise;

(b) bonds, debentures and loan (1) to an enterprise; (2)

(1) Loan to an enterprise: (i) where the enterprise is an affiliate of the investor; or (ii) where the maturity of the loan is at least one year, but it does not include a loan to a Party regardless of original maturity.

(2) Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics. Loans issued by one Party to another Party are not investments. Loans received by the investor with public guarantees of the host State are not included as investment.

(c) rights under contract, including turnkey, construction, management, production or revenue sharing contracts;

(d) claims to money and to any contractual performance having financial value;

(e) intellectual property rights and goodwill which are recognized pursuant to the laws, regulations and administrative orders of the host Party;

(f) concessions, licenses, authorizations, permits and similar rights conferred by law or under contracts, including those for the exploration and exploitation of natural resources;

(g) any other movable and immovable property and any related property rights such as leases, mortgages, liens and pledges;(3)

(3) For greater certainty, market share, market access, expected gains and opportunities for profit-making are not, by themselves, investments.

An investment includes the amounts yielded by an investment, in particular, profits, interests, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as an investment, provided that the change is effected in accordance with the applicable laws, regulations and administrative orders of the Party in whose territory the investment is made.

For greater certainty, investment shall not include:

(a) public debt;

(b) claims to money that arise solely from commercial contracts for the sale of goods or services;

(c) the extension of credit, in connection with a commercial transaction; and

(d) an order or judgment entered in a judicial or administrative action;

Investor of a Party means:

1. (a) with respect to the Philippines:

(i) an enterprise of the Republic of the Philippines; or

(ii) a natural person who is a national of the Republic of the Philippines and who is not a national or a permanent resident of the State of Israel; and

(b) with respect to Israel:

(i) an enterprise of the State of Israel; or

(ii) a natural person who is a national or permanent resident of the State of Israel who is not a national of the Republic of the Philippines; that has made investments in the territory of the other Party;

2. Subject to the conditions set out in Article 11 (Special Formalities and Information Requirements), investors shall be obligated to abide by all registration requirements, including, inter alia, the disclosure and verification regarding their nationality (4) or permanent residency. Such request to disclose shall not be used as a means to avoid the obligations under this Agreement.

(4) For the purpose of this Agreement, the term "nationality" shall include citizenship and shall be determined in accordance with each Party's domestic law.

Measure means any measure by a Party, whether in the form of a law, rule, regulation, procedure, decision, administrative action or any other form;

New York Convention means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958;

Respondent means the Party that is a party to an investment dispute;

Secretary-General means the Secretary-General of ICSID;
Territory means:

(a) with respect to Israel: the territory of Israel including the territorial sea as well as the continental shelf and the exclusive economic zone, over which Israel exercises sovereignty, sovereign rights or jurisdiction in accordance with international law and the laws of Israel;

(b) with respect to the Philippines, the term territory 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 which form part of the internal waters of the Philippines; and areas over which the Philippines has sovereignty, sovereign rights or jurisdiction all in accordance with the United Nations Convention on the Law of the Sea (UNCLOS).

TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement;

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law, adopted by the United Nations General Assembly on 15 December 1976, as revised in 2010.

Section B. Investment Promotion and Protection

Article 1. Scope and Coverage

1. This Agreement shall apply to measures adopted or maintained by a Party relating to:

(a) investors of the other Party; and

(b) covered investments.

2. This Agreement shall not apply to:

(a) any taxation measure, except for Article 6 (Expropriation and Compensation) and Article 7 (Transfers);

(b) subsidies or grants provided by a Party, including government-supported or guaranteed loans, guarantees and insurance;

(c) claims arising out of events which occurred prior to the entry into force of this Agreement; and

(d) any measure taken by a Party before the establishment of an investment. For the avoidance of doubt, measures taken before the establishment of an investment include, inter alia, any measure relating to the conduct of tender or bidding processes of government procurement prior to the conclusion of such processes.

3. Nothing in this Agreement shall affect the rights and obligations of a Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

4. Articles 3 (National Treatment) and 4 (Most-Favored Nation Treatment) shall not apply to:

(a) any measure that a Party adopts or maintains with respect to government procurement; and

(b) any measure relating to acquisition of rights to land and real estate.

5. Notwithstanding paragraphs 2, 3 and 4, any existing measures, shall not, by themselves give rise to a breach of Article 3 (National Treatment) or Article 4 (Most-Favored Nation Treatment).

Article 2. Treatment of Investments

1. Covered investments made by investors of each Party shall be accorded fair and equitable treatment and full protection and security in the territory of the other Party.

2. For greater certainty, a Party breaches the obligation of fair and equitable treatment referenced in paragraph 1 if a measure or series of measures constitute:

(a) denial of justice in criminal, civil or administrative proceedings;

(b) fundamental breach of due process, including a fundamental breach of transparency, in judicial and administrative proceedings;

(c) manifest arbitrariness; or

(d) targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief.

3. For greater certainty, "full protection and security" refers to a Party's obligations to provide the level of police protection reasonably necessary to ensure the physical security of covered investments.

4. For greater certainty, full protection and security does not imply, in any case, a better police protection than that accorded to nationals of the Party where the investment has been made.

5. The concepts of fair and equitable treatment and full protection and security do not require treatment to be accorded to covered investments in addition to or beyond what is required under the applicable customary international law and do not create additional substantive rights.

6. For greater certainty, a determination that there has been a breach of another provision of this Agreement, or of a separate international agreement does not establish that there has been a breach of this Article.

Article 3. National Treatment (5)

(5) For greater certainty, the Parties confirm their understanding that any requirement for nationality or residency of senior management or board of directors shall not be regarded inconsistent with this Article.

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, (6) to its own investors with respect to the management, maintenance, use or disposal of investments in its territory.

(6) For greater certainty, for the purpose of this Agreement, whether treatment is accorded in "like circumstances" under this Agreement depends on the totality of the circumstances.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to management, maintenance, use or disposal of investments.

3. This Article shall not apply to any measure covered by the exceptions to, or derogations from, obligations under the TRIPS Agreement.

Article 4. Most-Favored Nation Treatment (7)

(7) For greater certainty, the Parties confirm their understanding that any requirement for nationality or residency of senior management or board of directors shall not be regarded inconsistent with this Article.

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to investors of a non-Party with respect to the management, maintenance, use or disposal of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of investors of a non-Party with respect to the management, maintenance, use or disposal of investments.

3. For greater certainty, the treatment referred to in this Article does not encompass definitions provided for in other international treaties or any investor-state dispute settlement procedures or mechanisms.

4. For greater certainty, substantive provisions in other international treaties and other trade agreements where not accompanied by measures that are adopted or maintained by a Party pursuant to those provisions, do not, by themselves constitute "treatment", and thus cannot give rise to a breach of this Article.

5. This Article shall not apply to any measure covered by the exceptions to, or derogations from, obligations under the TRIPS Agreement.

Article 5. Compensation for Losses

1. Each Party shall accord to investors of the other Party that have suffered loss or damage relating to their covered investments in the territory of the former Party owing to war, armed conflict, state of emergency, revolution, insurrection, civil strife or any other similar event in the territory of that former Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favorable than that which it accords, in like circumstances, to its own investors or to investors of a non-Party.

2. Any payment under this Article shall be effectively realizable, freely transferable and freely convertible at the market exchange rate into freely usable currencies.

Article 6. Expropriation and Compensation (8)

(8) This Article shall be interpreted in accordance with Annex A (Expropriation).

1. A Party shall not expropriate or nationalize a covered investment either directly or indirectly through measures having an effect equivalent to expropriation or nationalization (hereinafter referred to as "expropriation"), except:

(a) for a public purpose;

(b) when made in accordance with the laws, regulations and administrative orders of a Party;

(c) in a non-discriminatory manner; and

(d) upon payment of compensation in accordance with paragraph 2.

2. The compensation referred to in paragraph 1, subparagraph (d) shall:

(a) be paid without delay (9) and in a freely usable currency;

(9) The parties understand that there may be legal and administrative processes that need to be observed before payments can be made provided that such processes will be made without undue delay.

(b) be equivalent to the fair market value of the expropriated investment:

(i) For Israel, immediately before the expropriation took place; and

(ii) For the Philippines, at the time of the filing of the Petition for Expropriation or when the expropriation took place,

whichever is applicable;

(c) not reflect any change in value occurring because the intended expropriation had become known earlier;

(d) be effectively realizable and freely transferable; and

(e) include interest accrued from the date of expropriation until the date of payment:

(i) For Israel, at a commercially reasonable rate for that currency; and

(ii) For the Philippines, at the prevailing legal interest rate in accordance with its law.

3. Without prejudice to Section C (Settlement of Investment Disputes Between a Party and an Investor of the Other Party), the investors affected shall have a right, under the laws, regulations and administrative orders of the Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of the legality of the expropriation and of the valuation of their investment, in accordance with the principles set out in this Article.

4. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the TRIPS Agreement.

Article 7. Transfers

1. Each Party shall allow all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

(a) contributions to capital, including the initial contribution and additional amounts to maintain or increase the covered investment;

(b) profits, capital gains, dividends, royalties, license fees, technical assistance and technical and management fees, interests, and other current income accruing from any covered investment;

(c) proceeds from the sale or liquidation of all or any part of the covered investment;

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Article 5 (Compensation for Losses) and Article 6 (Expropriation and Compensation);

(f) payments arising out of the settlement of a dispute by any means, including adjudication, arbitration or agreement between the parties to the dispute; and

(g) earnings and other remuneration of personnel engaged from abroad in connection with that covered investment.

2. Each Party shall allow such transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer through the equitable, non-discriminatory and good faith application of its laws, regulations and administrative orders relating to:

(a) the payment of taxes and dues;

(b) bankruptcy, insolvency, or the protection of the rights of creditors, including employees;

(c) issuing, trading or dealing in securities, futures, options or derivatives;

(d) criminal or penal offences and the recovery of the proceeds of crime;

(e) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(f) ensuring compliance with orders or judgments in judicial or administrative proceedings;

(g) social security, public retirement or compulsory savings schemes; or

(h) requirements to register (10) imposed by the central bank of a Party.

(10) For the Philippines, the requirements refer to the Bangko Sentral ng Pilipinas' Manual of Regulations on Foreign Exchange Transactions, as may be amended, pertaining to the relevant chapters on loans and investments.

4. Nothing in this Agreement shall affect the rights and obligations of the Parties as members of the IMF under the Articles of Agreement of the International Monetary Fund, as may be amended, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, as may be amended, provided that a Party shall not impose restrictions on any capital transactions inconsistently with the obligations under this Article regarding such transactions, except under Article 9 (Temporary Safeguard Measures) or at the request of the IMF.

Article 8. Subrogation

1. If a Party, or its designated agency, makes a payment to one of its investors under a guarantee, contract of insurance or other form of indemnity that it has entered into in respect of a covered investment in the territory of the other Party, the other Party shall recognize:

(a) the assignment to the former Party or its designated agency, of any right or claim of the investor in respect of such investment, that formed the basis of such payment; and

(b) the right of the former Party or its designated agency to exercise, by virtue of subrogation, such right or claim to the same extent as the original right or claim of the investor.

2. If a Party, or a designated agency, has made a payment to its investor and has taken over rights and claims of the investor under paragraph 1, that investor shall not, unless authorized in writing by the Party or its designated agency making the payment, pursue those rights and claims against the other Party.

3. In the exercise of subrogated or transferred right or claim, a Party or a designated agency of a Party exercising such right or claim shall disclose the coverage of the claims arrangement with its investors to the other Party.

Article 9. Temporary Safeguard Measures

1. A Party may adopt or maintain restrictive measures with regard to cross-border capital transactions as well as payments or transfers for transactions related to investments:

(a) in the event of serious balance of payments and the external financial difficulties or threat thereof; or

(b) in exceptional cases, where movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular monetary and exchange rate policies.

2. Restrictive measures referred to in paragraph 1 shall:

(a) be applied in such a manner that the other Party is treated no less favorably than any non-Party;

(b) be consistent with the Articles of Agreement of the International Monetary Fund, as may be amended;

(c) not exceed those necessary to deal with the circumstances set out in paragraph 1;

(d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves;

(e) avoid unnecessary damages to the commercial, economic and financial interests of the other Party; and 15 (f) not be confiscatory (11).

(11) Confiscation means the permanent deprivation of funds or other assets by order of a competent authority or a court, and application of said definition is limited only to this Article.

3. The Party which has adopted any measure under paragraph 1 shall notify the other Party, as soon as possible.

Article 10. Denial of Benefits

1. A Party may deny the benefits of this Agreement to an investor of the other Party that is an enterprise of the other Party and to its covered investments if persons of a non-Party own or control the enterprise and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Agreement were accorded to the enterprise or to its investments.

2. For purposes of this Article, an enterprise is:

(a) "owned" by an investor if more than 50 percent of the equity interest in it is beneficially owned by the investor; and

(b) "controlled" by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions.

3. The Philippines may deny the benefits of this Agreement to investors of the other Party and to investments of that investor where it establishes that such investor has made an investment in breach of the provisions of Commonwealth Act No. 108, entitled "An Act to Punish Acts of Evasion of Laws on the Nationalization of Certain Rights, Franchises or Privileges", as amended by Presidential Decree No. 715, otherwise known as "The Anti-Dummy Law", as may be amended, and such investor will be notified within a reasonable period of time thereafter.

Article 11. Special Formalities and Information Requirements

1. Nothing in Article 3 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that covered investments be legally constituted or registered under the requirements of its laws, regulations and administrative orders, provided that such formalities do not materially impair the protections afforded by the Party to investors of the other Party and to covered investments pursuant to this Agreement and are not used as means of avoiding the Party's obligations under this Agreement.

2. Notwithstanding Article 3 (National Treatment) and Article 4 (Most-Favored Nation Treatment), a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice both the commercial advantage with regard to its competitors and legitimate commercial interest of the investor or its covered investment.

Article 12. General and Security Exceptions

1. Notwithstanding Article 4 (Most-Favored Nation Treatment), nothing in this Agreement shall be construed so as to oblige a Party to extend to the investors of the other Party and to their covered investments any preferential treatment resulting from:

(a) any bilateral, regional or multilateral international agreement solely for the promotion, protection, liberalization and facilitation of investments which was signed prior to the date of entry into force of this Agreement;

(b) any existing or future customs union, free trade area agreement, common market, economic union or similar international agreement, to which either Party is a party or may become a party within the meaning of "customs union" or "free trade area" in accordance with Article XXIV of the GATT 1994 and Article V of the GATS; or

(c) any existing or future bilateral or multilateral agreement concerning intellectual property.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between investors of the Parties, where like conditions prevail, or a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Party from adopting, maintaining or enforcing measures, including environmental measures, that are necessary to:

(a) protect human, animal or plant life or health;

(b) protect public morals or to maintain public order, provided that the public order exception may only be invoked where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society;

(c) the protection of national treasures of artistic, historic or archaeological value;

(d) the conservation of living or non-living exhaustible natural resources, provided that such measures are made effective in conjunction with restrictions on domestic production or consumption; or

(e) secure compliance with the laws, regulations and administrative orders which are not inconsistent with the provisions of this Agreement including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contract;

(ii) the protection of the privacy of the individual in relation to the processing and dissemination of personal data and the protection of confidentiality of personal records and accounts; and

(iii) safety.

3. Nothing in this Agreement shall prevent the Parties from adopting or maintaining measures for prudential reasons, including:

(a) the protection of investors, depositors, policy holders, policy claimants, as well as financial market participants or persons to whom a fiduciary duty is owed by a financial institution;

(b) the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions; and

(c) ensuring the integrity and stability of the Party's financial system. Such measures shall be taken in good faith and shall not be used as means of avoiding a Party's commitments or obligations under this Agreement.

4. Nothing in this Agreement shall be construed:

(a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or

(b) to preclude a Party from applying measures that it considers necessary for:

(i) the fulfilment of its obligations under the United Nations Charter with respect to the maintenance or restoration of international peace or security;

(ii) the protection of its own essential security interests; or

(iii) in order to carry out obligations it has accepted for the purpose of maintaining international security.

Article 13. Promotion and Facilitation of Investment

1. The Parties shall endeavor to cooperate with regard to promoting and increasing investment activities in order to strengthen their economic relations.

2. Subject to its laws, regulations and administrative orders, each Party shall in its territory, admit investments of investors of the other Party.

3. Subject to its laws, regulations and administrative orders, each Party shall endeavor to create favorable, stable and transparent conditions for investments by investors of the other Party.

Section C. Settlement of Investment Disputes between a Party and an Investor of the other Party

Article 1. Scope

1. This Section shall apply to investment disputes between the disputing parties arising from an alleged breach of an obligation under Article 2 (Treatment of Investments), Article 3 (National Treatment), Article 4 (Most-Favored Nation Treatment), Article 5 (Compensation for Losses), Article 6 (Expropriation and Compensation) and Article 7 (Transfers) of Section B (Investment Promotion and Protection), which causes loss or damage to the Claimant in relation to its covered investment.

2. This Section shall not apply where the Claimant is a national (12) or citizen of the Respondent.

(12) For the purpose of this Article, for Israel, the term national shall include permanent resident.

Article 2. Consultations and Negotiations

1. In the event of an investment dispute referred to in Article 1 (Scope), the disputing parties shall, as far as possible, resolve the dispute through consultations, with a view towards reaching an amicable settlement. Such consultations and negotiations, may include the use of non-binding, third-party procedures.

2. The Claimant shall deliver to the contact point of the Respondent a written request for consultations and negotiations regarding an investment dispute setting out a brief description of the legal and factual basis for the dispute.

3. For purposes of this Article, the Parties agree to establish Contact Points as follows:

(a) for the State of Israel: the Ministry of Finance, Chief Economist Department, or its successor;

(b) for the Republic of the Philippines: the Department of Foreign Affairs or its successor;

4. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of an arbitral tribunal.

Article 3. Submission of Claim to Arbitration

1. In the event that an investment dispute cannot be settled by consultations and negotiations according to Article 2 (Consultations and Negotiations) within 180 days from the receipt by the Respondent of the written request for consultations and negotiations, the Claimant may submit the dispute to arbitration under this Article, claiming that:

(a) the Respondent has breached an obligation referred to in Article 1.1 (Scope); and

(b) the Claimant has incurred loss or damage by reason of, or arising out of, that breach.

2. In relation to a specific investment dispute, the applicable arbitration rules may be waived, varied or modified by written agreement between the disputing parties. Such rules shall be binding on the relevant arbitral tribunal or tribunals, and on individual arbitrators serving on such arbitral tribunals.

3. The Claimant shall include the following in the notice of arbitration:

(a) the name of the arbitrator that the Claimant appoints; or

(b) the Claimant's written consent for the Secretary-General to appoint the arbitrator on behalf of the Claimant.

Article 4. Choice of Forum

1. Where the investment dispute has not been resolved through consultations within 180 days from receipt by the Respondent of the written request for consultations, unless the disputing parties agree otherwise, the Claimant may submit a claim:

(a) to the courts or administrative tribunals of the Respondent, provided that such courts or administrative tribunals or agencies have jurisdiction over the dispute and the Claimant has exhausted municipal remedies before such courts, tribunals or agencies;

(b) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, (13) provided that both Parties are parties to the ICSID Convention;

(13) In the case of the Philippines, the submission of a claim under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings shall be subject to a separate written agreement between the disputing parties in the event that an investment dispute arises.

(c) under the ICSID Additional Facility Rules, provided that either Party, but not both, is a party to the ICSID Convention;

(d) under the ICC Arbitration Rules;

(e) under the UNCITRAL Arbitration Rules; or

(f) if the disputing parties agree, under any other arbitration institution or arbitration rules.

2. A claim shall be deemed submitted to arbitration under this Article when the Claimant's notice of or request for arbitration:

(a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General of ICSID;

(b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General of ICSID;

(c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 20 of the UNCITRAL Arbitration Rules, is received by the Respondent; or

(d) under any other arbitration institution or arbitration rules selected under subparagraph 1(f) is received by the Respondent, unless otherwise specified by such institution or in such rules.

3. A claim asserted by the Claimant for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitral rules.

Article 5. Consent of Each Party to Arbitration

1. Each Party hereby consents to the submission of a claim to arbitration under this Article in accordance with this Agreement.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall be deemed to satisfy the requirements of:

(a) Chapter II of the ICSID Convention or the ICSID Additional Facility Rules for written consent of the parties, subject to the separate written agreement under Footnote 13 of Article 4 (Choice of Forum) of this Section; and

(b) Article II of the New York Convention for an agreement in writing.

Article 6. Conditions and Limitations on Submission of Claim

1. No claim may be submitted to arbitration under this Article if more than three years have elapsed from the date on which the Claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 3.1 (Submission of Claim to Arbitration) and knowledge that the Claimant has incurred loss or damage.

2. No claim may be submitted to arbitration under this Section unless:

(a) the Claimant consents in writing to arbitration in accordance with the procedures set out in this Article, subject to the separate written agreement under Footnote 13 of Article 4 (Choice of Forum) of this Section;

(b) six months have elapsed since the Claimant requested in writing the Respondent for consultations and negotiations and at least 90 days before submitting any claim to arbitration under this Section, a Claimant shall deliver to the Respondent a written notice of its intention to submit the claim to arbitration (notice of intent). The notice shall specify:

(i) the forum for dispute settlement being sought, under Article 4.1 (Choice of Forum), subparagraphs (b) to (f);

(ii) the name and address of the Claimant;

(iii) for each claim, the provision of Section B (Investment Promotion and Protection) alleged to have been breached and any other relevant provisions;

(iv) the legal and factual basis for each claim; and

(v) the relief sought, and where appropriate, the approximate amount of damages claimed.

(c) the notice of arbitration being accompanied, for claims submitted to arbitration under Article 3 (Submission of Claim to Arbitration), by the Claimant's written waiver of any right to initiate or continue before any administrative tribunal or court under the law of the Parties, or other dispute settlement mechanisms including investment dispute settlement mechanisms under any other bilateral or multilateral agreement to which either or both Parties are party, and any proceedings with respect to the subject matter of its claim or to any measure of the Respondent alleged to constitute a breach referred to in paragraph 2. Accordingly, once the Claimant has submitted the claim to arbitration in accordance with Article 4.1 (Choice of Forum), subparagraphs (b) to (f), the choice of forum shall be final.

(d) no judgment or award has been delivered on the subject matter of the dispute with regard to any measure alleged to constitute a breach referred to in Article 3 (Submission of Claim to Arbitration) before any administrative tribunal or court under the law of either Party, other dispute settlement procedures or under the mechanisms mentioned in subparagraph (b).

3. Notwithstanding subparagraphs 2(c) and (d), the Claimant may initiate or continue an action that seeks interim injunctive

relief that does not involve the payment of monetary damages before an administrative tribunal or court of justice under the law of the Respondent, provided that the action is brought for the sole purpose of preserving the Claimant's rights and interests during the pendency of the arbitration.

Article 7. Selection of Arbitrators

1. Unless the disputing parties otherwise agree, the arbitral tribunal shall comprise of three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. The arbitrators appointed by each disputing party shall:

(a) not be of the same nationality as the Claimant, or be a national of the Respondent;

(b) not have his or her usual place of residence in the territory of the Parties; and not be employed by or affiliated with the Parties or the Claimant.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Article, in accordance with paragraph 3. If the Secretary-General is a national of either Party or a national of a non-Party that does not maintain diplomatic relations with either Party or is otherwise prevented from discharging the said function, the Deputy Secretary-General shall be invited to make the appointment.

3. If a tribunal has not been constituted under the periods specified in the rules of arbitration provided in Article 4.1 (Choice of Forum), subparagraphs (b) to (f) or within 90 days from the date a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a party to the dispute, shall appoint, in his or her discretion and in accordance with the terms set out in paragraphs 1, 5 and 6, the arbitrator or arbitrators not yet appointed.

4. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

(a) the Respondent agrees to the appointment of a national of the other Party to a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules; and

(b) a Claimant referred to in Article 3.1 (Submission of Claim to Arbitration) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the Claimant agrees in writing to the appointment of a national of the Respondent as a member of the arbitral tribunal.

5. Subject to the rights of the disputing parties provided for in this Article to choose a national of each Party as an arbitrator, all arbitrators referred to under this Article shall be nationals of states having diplomatic relations with both Parties.

6. Arbitrators shall have expertise or experience in public international law, international trade or international investment rules, and be independent of, and not be affiliated with or take instructions from the Parties or the Claimant.

7. The disputing parties may agree on rules relating to expenses incurred by the arbitral tribunal, including arbitrators' remuneration.

8. Where any arbitrator appointed as provided for in this Article resigns or becomes unable to act, a successor shall be appointed in accordance with the procedures governing such situations, stipulated in the applicable arbitration rules chosen by the Claimant under Article 4 (Choice of Forum), mutatis mutandis and in accordance with Paragraphs 1, 5 and 6 of this Article.

Article 8. Place of Arbitration

1. The Claimant and the Respondent may agree on the place of arbitration.

2. If the Claimant and the Respondent fail to reach an agreement regarding the place of arbitration, the arbitral tribunal shall, in consultation with the disputing parties, determine the place of arbitration provided that:

(a) the place shall be in the territory of a Party or in the territory of a non-Party that is a party to the New York Convention;

(b) the determined place of arbitration is in accordance with the applicable arbitration rules;

(c) the tribunal has taken the disputing parties' views and interests into consideration, including with regard to the financial burden of the arbitration procedure; and

(d) if the determined location is in the territory of a non-Party, it shall be a non-Party with which both Parties have diplomatic

relations.

Article 9. Consolidation

Without prejudice to the arbitration rules chosen to govern the arbitration procedure under Article 3.1 (Submission of Claim to Arbitration), where two or more claims have been submitted separately to arbitration and the claims have a question of law or fact in common arising out of the same or similar events or circumstances, the disputing parties may agree to consolidate those claims in any manner they deem appropriate.

Article 10. Conduct of Arbitration

1. Unless the disputing parties have agreed to another expedited procedure for making preliminary objections, the Respondent may, 45 days after the constitution of the arbitral tribunal, and in any event before the first session of the arbitral tribunal, file an objection that a claim is manifestly without legal merit. The Respondent shall specify as precisely as possible the basis for the objection. The arbitral tribunal, after giving the disputing parties the opportunity to present their observations on the objection, shall, at its first session or promptly thereafter, notify the disputing parties of its decision on the objection. The decision of the arbitral tribunal shall be without prejudice to the right of the Respondent to file an objection to the jurisdiction of the arbitral tribunal or to object, in the course of the proceedings, that a claim lacks legal merit.

2. Where an investor claims that the Respondent has breached Article 6 (Expropriation and Compensation) of Section B (Investment Promotion and Protection) by the adoption or enforcement of a taxation measure, the Parties shall, upon request from the Respondent, hold consultations with a view to determining whether the taxation measure in question has an effect equivalent to expropriation or nationalization. Any arbitral tribunal that may be established shall accord serious consideration to the decision of both Parties under this paragraph.

If both Parties fail either to initiate such consultations or, having initiated such consultations, fail to determine whether such taxation measure has an effect equivalent to expropriation or nationalization within a period of 180 days from the date of the receipt of the notice of arbitration under Article 3 (Submission of Claim to Arbitration), the Claimant shall not be prevented from submitting its claim to arbitration.

3. The arbitral tribunal may order security for costs upon request of the Respondent. The arbitral tribunal shall especially consider ordering security for costs when there is a reason to believe:

(a) that the Claimant will be unable or unwilling to pay, if ordered to do so, a reasonable part of attorney's fees and other costs to the Respondent; or

(b) that the Claimant has divested assets to avoid the consequences of the arbitral proceedings.

Should the Claimant fail to pay the security for costs within the time period set by the arbitral tribunal, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

Article 11. Governing Law

1. Subject to paragraph 3 of this Article, when a claim is submitted under this Section, the arbitral tribunal shall decide the issues in dispute in accordance with this Agreement, applicable rules of international law and take into consideration, as a matter of fact, any relevant domestic law of the Respondent.

2. For greater certainty, the arbitral tribunal shall be bound by the interpretation given to the domestic law by the courts or authorities which are competent to interpret the relevant domestic law. Any meaning given to the relevant domestic law by the arbitral tribunal shall not be binding upon the courts and the authorities of either Party. The arbitral tribunal does not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Agreement, under the domestic laws, regulations and administrative orders of the Respondent.

3. In cases where reference to a WTO Agreement is made in an arbitration procedure under this Section, the arbitral tribunal shall consider relevant interpretation in reports of panels and the WTO Appellate Body adopted by the WTO Dispute Settlement Body regarding substantially equivalent rights or obligations of the Parties under that WTO Agreement, to which a Party is a member.

Article 12. Awards

1. Where an arbitral tribunal makes a final award, the arbitral tribunal may award only one or both of the following: 28 (a) monetary damages and any applicable interest; and (b) restitution of property, in which case the award shall provide that the Respondent may pay monetary damages and any applicable interest in lieu of restitution.

2. A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.

3. Without prejudice to paragraph 2, the monetary value of the award made under paragraph 1 shall not exceed the monetary value of the loss or damage caused to the investor as a result of the breach determined by the arbitral tribunal.

4. For greater certainty, an arbitral tribunal may not award moral and punitive damages.

5. An award made by an arbitral tribunal shall be final and binding upon the disputing parties. The award made by an arbitral tribunal shall have no binding force except between the disputing parties and in respect of the particular case. A disputing party shall abide by and comply with an award without undue delay.

6. Each Party shall provide for the enforcement of an award in its territory.

7. A disputing party may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention.

Section D. Settlement of Dispute between the Parties

1. Each Party shall afford adequate opportunity for consultation, through diplomatic channels, regarding any dispute with the other Party concerning the interpretation or application of this Agreement.

2. Any dispute between the Parties as to the interpretation and application of this Agreement, not satisfactorily resolved by the procedures stipulated in paragraph 1 within a period of 180 days from notification of the dispute, shall, upon request by either Party be referred to an ad hoc arbitral tribunal which shall consist of three arbitrators.

3. Unless otherwise provided in this Section, or in the absence of an agreement between the Parties to the contrary, the UNCITRAL Arbitration Rules shall apply to the proceedings of the arbitral tribunal. However, these rules may be modified by the Parties or by the arbitrators appointed pursuant to paragraph 4, provided that both Parties agree to the modification. Subject to the provisions of this Article, the arbitral tribunal may, for its part, determine its own rules and procedures.

4. Arbitration proceedings shall be instituted upon notice being given through diplomatic channels by the Party instituting such proceedings to the other Party. Such notice shall contain a statement setting forth in summary form the grounds of the claim, the nature of the relief sought and the name of the arbitrator appointed by the Party instituting such proceedings.

5. Within 60 days after the receipt of such notice, the other Party shall notify the Party instituting the proceedings of the name of its appointed arbitrator.

6. The appointed arbitrators shall, within 60 days from the appointment of the second arbitrator, select a third arbitrator who shall be a national of a non-contracting State.

7. All arbitrators referred to under this Section shall be nationals of States having diplomatic relations with both Parties.

8. The Parties shall, within 30 days from the selection of the third arbitrator, approve the selection of that arbitrator, who shall act as the Chairperson of the arbitral tribunal.

9. The UNCITRAL Arbitration Rules applicable to appointing members of three-member panels shall apply mutatis mutandis to other matters relating to the appointment of the arbitrators of the arbitral tribunal provided that the appointing authority referenced in those rules shall be the Secretary-General of the Permanent Court of Arbitration at The Hague. If the Secretary-General is a national of either Party, a national of a state not having diplomatic relations with both Parties, or otherwise prevented from discharging the said function, the Deputy Secretary-General shall be invited to make the appointment.

10. In case any appointed arbitrator shall resign or become unable to act, a successor arbitrator shall be appointed in the same manner and conditions as prescribed under this Section for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended during the pendency of the appointment of the successor arbitrator.

11. The arbitral tribunal shall decide all questions relating to its competence.

12. Unless otherwise agreed by the Parties, all submissions of documents shall be made and all hearings shall be completed within a period of 180 days from the date of selection of the third arbitrator.

13. The arbitral tribunal, within 60 days from the date of the final submissions of documents or the date of the closing of the hearings, whichever is later, shall render the decision or award, unless the Parties agree otherwise.

14. The venue for the proceedings of the arbitral tribunal shall be decided by mutual agreement between the Parties. If the Parties are unable to reach an agreement, the venue shall be Manila, if the complaining Party is Israel, and Jerusalem if the complaining Party is the Philippines.

15. Before the arbitral tribunal makes a decision, it may, at any stage of the proceedings, propose to the Parties that the dispute be settled amicably.

16. The arbitral tribunal shall reach its award by majority vote taking into account the provisions of this Agreement, and the rules of international law applicable to the subject matter. Such award shall be final and binding on both Parties. The arbitral tribunal shall, upon the request of either Party, explain the reasons of its award.

17. Each Party shall bear the cost of its appointed arbitrator and of its representation. The remuneration of the Chairperson and the arbitral tribunal as well as the relevant costs incurred in discharging their functions shall be borne in equal parts by the Parties. The remaining costs of the arbitral tribunal shall be borne equally by the Parties.

Section E. Final Provisions

1. The Parties shall notify each other, in writing through diplomatic channels, of the completion of their respective internal procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force on the date of the later notification. It shall remain in force for a period of 10 years after its entry into 31 force and shall continue to be in force unless terminated as provided for in paragraph 2.

2. A Party may terminate this Agreement at the end of the initial 10 year period or at any time thereafter by giving a written notice of termination one year in advance to the other Party through diplomatic channels.

3. In respect of investments made prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of 10 years from the date of termination of this Agreement.

4. The Parties may agree in writing upon any amendments to this Agreement. Amendments to this Agreement shall enter into force in accordance with the procedure necessary for the entry into force of this Agreement and shall constitute an integral part of this Agreement.

5. The Annexes and footnotes to this Agreement shall constitute an integral part of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

Done at Jerusalem on June 7th 2022, which corresponds to 8th Sivan 5782, in duplicate, in the Hebrew and English languages, both texts being equally authentic. In case of divergence of interpretation of the texts, the English text shall prevail.

FOR THE GOVERNMENT OF THE STATE OF ISRAEL:

AVIGDOR LIEBERMAN

Minister of Finance

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES:

RAMON M. LOPEZ

Secretary of Trade and Industry

Annex A. Expropriation

The Parties confirm their shared understanding that:

1. A measure or series of measures by a Party cannot constitute an expropriation unless it interferes with a tangible or

intangible property right or property interest in a covered investment.

2. Expropriation may be direct or indirect:

(a) direct expropriation occurs when a covered investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure; and

(b) indirect expropriation occurs if a measure or series of measures of a Party has an effect equivalent to direct expropriation, in that it substantially deprives the investor of the fundamental attributes of property in its covered investment, including the right to use, enjoy and dispose of its covered investment, without formal transfer of title or outright seizure.

3. The determination of whether a measure or series of measures of a Party, in a specific fact situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that takes into consideration, among other factors:

(a) the economic impact of a measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of a covered investment does not establish that an indirect expropriation has occurred;

(b) whether the measure or series of measures breaches a Party's prior binding written commitment to the investor;

(c) the duration of the measure or series of measures of a Party; and

(d) the character of the measure or series of measures, notably their object, context and intent.

4. For greater certainty, a non-discriminatory measure or series of measures by a Party that are designed and applied to achieve legitimate public welfare objectives, such as the protection of public health, safety and the environment, do not constitute expropriation of the type referred to in subparagraph 2(b).

Annex B. Taxation and Expropriation

The determination of whether a taxation measure, in a specific fact situation, constitutes an expropriation requires a case-by-case, fact-based inquiry that considers all relevant factors relating to the investment, including the factors listed in Annex A and the following considerations:

1. The imposition of taxes does not generally constitute an expropriation. The mere introduction of a new taxation measure or the imposition of a taxation measure in more than one jurisdiction in respect of an investment generally does not in and of itself constitute an expropriation;

2. A taxation measure that is consistent with internationally recognized tax policies, principles and practices should not constitute an expropriation. In particular, a taxation measure aimed at preventing the avoidance or evasion of taxation measures generally does not constitute an expropriation;

3. A taxation measure that is applied on a non-discriminatory basis, as opposed to a taxation measure that is targeted at investors of a particular nationality or at specific taxpayers, is less likely to constitute an expropriation; and

4. A taxation measure generally does not constitute an expropriation if it was already in force when the investment was made and information about the measure was publicly available.