

# **Agreement between the Kingdom of Spain and the Republic of the Philippines on Reciprocal Investment Promotion and Protection**

The Kingdom of the Spain and the Republic of the Philippines, hereinafter referred to as the Parties:

DESIRING to intensify economic cooperation between both countries;

INTENDING to create favourable conditions for investments by investors of one Party in the territory of the other Party, and to increase prosperity in their respective territories;

RECOGNIZING that promotion and protection of such investments will benefit the economic prosperity of both countries:

HAVE AGREED AS FOLLOWS:

## **Article 1. Definition**

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 Party, and more particularly, though not exclusively: . The term "investment" shall mean any kind of asset accepted in accordance with the respective laws and regulations of either Party, and more particularly, though not exclusively:

- a) movable or immovable property as well as other rights in rem, such as mortgages, liens, 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, intellectual and industrial property rights, patents, technical processes, know-how, trademarks, trade names and goodwill; and
- e) business concessions conferred by law, including concessions to search for, extract or exploit natural resources.

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

2. The term "territory" means:

- a) With respect to the Kingdom of Spain, the land territory and territorial waters of Spain as well as the exclusive economic zone and the continental shelf that extends outside the limits of its territorial waters over which it has or may have jurisdiction and sovereign rights for the purpose of prospecting, exploration and conservation of natural resources, pursuant to international law.
- b) With respect to the Republic of the Philippines, 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.

The term "investor" shall mean:

- a) individuals who, with respect to the Kingdom of Spain, are residents in Spain under Spanish law; and with respect to the Republic of the Philippines, individuals who are citizens of the Philippines within the meaning of its Constitution;
- b) With respect to both countries, legal entities, including companies, associations 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.

4. The term "investment income" means the amounts yielded by an investment as profits, interest, capital gains, dividends, royalties, fees and other legitimate returns by an investment as profits, interest, capital gains, dividends, royalties, fees and other legitimate returns

## **Article 2. Promotion and Acceptance**

Each Party shall promote, as far as possible, investments in its territory by investors of the other Party and shall admit such investments in accordance with its existing laws and regulations. Such investments shall be accorded equitable and fair treatment.

## **Article 3. Treatment**

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

2. Each Party shall in its territory accord to investors of the other Party, as regards management, maintenance, use, enjoyment, or disposal of their investments, treatment not less favourable than that which it accords to investors of any third State.

3. The provisions of this agreement relative to the grant of treatment not less favourable than that accorded to investors of any third state shall not be considered as to oblige one Party to extend to the investors of the other Party the 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 of which either Party is or may become a member, or measures leading to the formation of a customs union or free trade area:

b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

## **Article 4. Nationalization and Expropriation**

Investments or income from investments of either Party shall not be nationalized, expropriated or subjected to measures having an effect equivalent to nationalization or expropriation, inter alia, legally independent measures of dispossession or taking, all hereinafter referred to as "expropriation", in the territory of the other Party except for public use or for public interest, including welfare or defense, and upon adequate and effective compensation, provided that such measures are taken on a nondiscriminatory basis and in accordance with law.

2. Such compensation shall amount to the market value immediately prior to the announcement of the expropriation of the investments affected and shall, be made without undue delay, be effectively realizable and be freely transferable.

## **Article 5. Compensation and Settlement**

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

## **Article 6. Transfers**

1. Each Party shall, in accordance with its laws and regulations, grant to investors of the other Party the free transfer of payments resulting from their investments and in particular of the following items:

Investment income, as defined in Article ;

Indemnities provided for under Articles IV and V;

Amounts from total or partial liquidation of investments;

Earnings of natural persons who have obtained in the territory of the Party where the investments have been made the corresponding work permits in connection with an investment.

## **Article 7. Subrogation**

In case one Party has granted any insurance or guarantee agreement against noncommercial risk in respect of an investment made by its own investors in the territory of the other Party and has made payments to such investors under the guarantee, the other Party shall recognize the transfer of the economic rights of the investors to the former Party. This subrogation will make it possible for the former 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 latter 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 Party of the investment have been met.

## **Article 8. Consultation**

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

## **Article 9. Disputes between One Party and an Investor of the other Party**

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

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

- a) the competent court of the Party for decision; or
  - b) the International Centre for the Settlement of Investment Disputes through conciliation or arbitration, established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, of March 18, 1965 done in Washington, D.C.
3. Neither Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and a Party has failed to abide by or to comply with the award rendered by the International Centre for Settlement of Investment Disputes.

## **Article 10. Conflicts of Interpretation of the Agreement between the Parties**

1. Disputes between both 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. . Disputes between both 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 the date on which either Contracting Party informs in writing the other Party, they shall, at the request of either Party, be submitted for settlement to an ad hoc international arbitral tribunal.

3. The ad hoc international tribunal mentioned above shall be established as follows:

The arbitral tribunal shall be composed of three arbitrators. Each Party shall appoint one arbitrator; the two arbitrators shall propose by mutual agreement the third arbitrator who is a national of a third State which has diplomatic relations with both Parties, and the third arbitrator shall be appointed as Chairman of the Tribunal by both 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 Party may, in the absence of any other arrangement, invite the President of the International

Court of Justice to make the necessary appointments within three months. Should the President be a national of one 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 Party. . 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 Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments within three months. Should the President be a national of one 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 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 Parties by majority of votes. Such award is final and binding upon the Parties

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

## **Article 11. Entry Into Force, Extension and Termination**

1. This Agreement shall enter into force on the date on which the two Governments shall have notified each other that the respective constitutional formalities and internal procedures required for the entry into force of international agreements have been completed. It shall remain in force for an initial period often years and by tacit renewal, for five-year periods. This Agreement shall enter into force on the date on which the two Governments shall have notified each other that the respective constitutional formalities and internal procedures required for the entry into force of international agreements have been completed. It shall remain in force for an initial period often years and by tacit renewal, for five-year periods.

2. This Agreement shall apply to investments made prior to this Agreement, provided that such investments have been made in accordance with the laws and regulations of the host Party at the time the investments were made

3. Either Party may terminate this Agreement by prior notification in writing six months before the date of its expiration. . Either Party may terminate this Agreement by prior notification in writing six months before the date of its expiration.

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