

# **Agreement between the Republic of Philippines and the State of Kuwait for the Mutual Encouragement and Protection of Investments**

The Government of the Republic of Philippines and the Government of the State of Kuwait, (hereinafter referred to as "the Contracting Parties");

Desiring to create the appropriate conditions for the development of economic cooperation between them and, in particular, for investments made by investors of the Contracting Party in the territory of the other Contracting Party;

Recognizing that the encouragement and mutual protection of such investments will be an incentive to stimulate the commercial initiative and increase prosperity in both Contracting Parties;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

(1) The term "investment" means all types of assets or rights owned or dominated directly or indirectly by an investor of a third party of the Contracting Party and is invested in the territory of the other Contracting Party in accordance with the laws and regulations of that other Contracting Party. It includes, but is not limited to:

(A) Movable and immovable property and any property rights related thereto, such as rents, mortgages, debt concessions, possession mortgages and usufruct rights;

(B) Shares or shares and other forms of debt rights in a company and other debts and loans and securities issued by any investor of the Contracting Party;

(C) Claims for funds and claims for any other assets or performance in accordance with a contract of economic value;

(D) Intellectual property rights, including but not limited to copyrights, trademarks, patents, designs, industrial plans, technical processes, technical expertise, trade secrets, trade names and goodwill;

(E) Any right granted by law, contract, or under any licenses and permits granted in accordance with the law, including the rights to prospecting, exploration, extraction or exploitation of natural resources, and the rights to engage in any other economic or commercial activities or service provision.

The term "investment" applies to "returns" held for the purpose of reinvestment and to the liquidation product, as these terms are known later.

Any change in the form in which the assets or rights were invested or reinvested will not affect its nature as an investment.

(2) The term "investor", means:

(A) a natural person holding the nationality or citizenship of the Contracting Party in accordance with the applicable laws;

(B) the Government of that Contracting Party;

(C) Any legal person established or established under the laws and regulations of that contracting party, such as institutes, development funds, charitable and scientific agencies and institutions, and any other legal establishments, bodies, and companies that engage in actual activity under the laws of the party in question and whose main center is in the territory of the relevant party in which effective management takes place.

(3) The term "company" means to include any legal entity, whether or not it is organized for financial profit, and whether it is owned or dominated by the government or private sector, which was established in accordance with the laws of the

Contracting Party or is owned or effectively controlled by the investors of the contracting party, and it includes a company, a credit company, a partnership or an individual property company, branches, joint venture, union or other similar organizations.

(4) The term "returns" means the amounts that an investment achieves, regardless of the form in which it is paid, and includes, in particular but not limited to, profits, interest, capital gains, stock dividends, royalties, management fees, technical assistance, or other fees for fees, and payments in kind of any kind.

(5) The term "liquidation" means any act carried out for the purpose of the total or partial termination of the investment.

(6) The term "territory" means:

(A) With respect to the State of Kuwait, the territory of the State of Kuwait, and includes any region outside the territorial sea which, in accordance with international law, has been determined or may subsequently be determined in accordance with the laws of the State of Kuwait as a region in which the rights of sovereignty or jurisdiction may be exercised.

(B) In relation to the Republic of the Philippines, as mentioned in Article 1 of the 1987 Constitution, includes the national territories and the Philippine archipelago with all the islands and waters that surround it, and all the territories in which the Philippines exercises sovereignty or jurisdiction including land, rivers, and airspace including Marine lands, under the soil, seabed, rocky islands and other marine areas. The waters that surround the islands of the archipelago, or between it or connecting it to each other, regardless of the width and dimensions, form part of the internal waters of the Philippines.

(7) The term "freely convertible currency" means any currency designated by the International Monetary Fund from time to time as a currency freely used in accordance with the provisions of the IMF agreement and any amendments.

(8) The term "without delay" means the period normally required to complete the formalities necessary for the transfer of payments. The aforementioned period shall begin on the day on which the transfer request is submitted, provided that in no case shall it exceed one month.

## **Article 2. Entry and Encouragement of Investments**

(1) Each of the Contracting Parties in his region shall, in accordance with its applicable laws and regulations, accept and encourage the investments of investors belonging to the other Contracting Party.

(2) Each of the Contracting Parties, with respect to investments accepted in its territory, shall make all necessary permits, approvals, licenses, licenses and authorizations to the extent permitted by the principles and conditions specified in its laws and regulations.

(3) The Contracting Parties may consult with each other by any means they consider appropriate to encourage and facilitate investment opportunities within their respective territories.

(4) Each of the Contracting parties, in accordance with its laws and regulations relating to entry, residence, and work, regardless of nationality or natural persons, shall consider in good faith and sympathetically and regardless of nationality or citizenship, the requests of key employees, including persons of higher ranks of technicians and administrators appointed for investment purposes, in order to enter and temporary reside and work in its territory. It shall also give to their immediate family members the same treatment with regard to entry and temporary residence at the host Contracting Party.

(5) When goods or persons associated with an investment are transported, each of the two Contracting Parties authorizes and to the extent permitted by its laws and regulations, that such transfer is made by projects of the other Contracting Party.

## **Article 3. Protection of Investments**

(1) The private investments of investors of either Contracting Party shall enjoy at all times a fair and equitable treatment and full protection and security in the territory of the other Contracting Party in a manner consistent with the principles recognized by international law and the provisions of this agreement. Neither of the Contracting Parties will in any way take arbitrary or discriminatory measures that will harm the use, management, operation, expansion, sale, or other disposal of investments.

(2) Each of the Contracting Parties shall announce to the investors all the laws, regulations, judicial decisions, administrative practices, instructions, procedures, and instructions that directly relate to or affect the investments in his region for the investors of the other contracting party.

(3) Each Contracting Party shall provide effective means to confirm claims and implement rights in relation to investments. Each Contracting Party must guarantee the investors of the other Contracting Party the right to access its courts of law, its agencies, administrative bodies and all other bodies exercising judicial authority, as well as the right to employ selected and qualified persons according to the laws and regulations applied for the purpose of confirming claims and implementing rights in relation to their investments.

(4) No Contracting Party, as a condition of incorporation, acquisition, expansion, use, management or operation of the investments of investors of the other Contracting Party, shall impose compulsory measures, which may require or restrict the purchase of materials, energy, fuel, means of production, transportation, or operation of any kind, or restrict the marketing of products inside or outside its region, or any measures that have a discriminatory effect against investments made by investors of the other Contracting Party in favor of investments made by investors or investors and a third country. In addition, taking into account the applicable laws governing foreign direct and indirect investment in the relevant Contracting Party, the investments in the host Contracting Party will not be subject to additional performance requirements that may harm their existence or may adversely affect their use, management, enjoyment, operation, expansion, or liquidation or any other activity.

(5) Investments made by investors affiliated with either of the Contracting Parties in the host Contracting Party will not be subject to seizure or confiscation or any similar procedures except in accordance with the legal procedures and in accordance with the applicable principles of international law, and other provisions related to this agreement.

(6) Each Contracting Party shall observe any obligation or undertaking to which it is a party in respect of investments in its territory for investors of the other Contracting Party.

## **Article 4. Treatment of Investments**

(1) Each Contracting Party in its territory shall grant the investors of the other Contracting Party in respect of the use, management, enjoyment, operation, expansion, sale and any other dispositions of their investments, a treatment no less favorable than that granted to its investors or the investors of any third country, whichever is more favourable.

(2) Notwithstanding, the provisions of this article are not interpreted as requiring the contracting party to provide the investors of the other contracting party the advantage of any transaction, preference, or concession resulting from:

(A) Any customs union, economic union, free trade area, monetary union or any other form of regional economic arrangement or any other similar international agreement in which either of the Contracting Parties is a party or may become a party to it;

(B) any international, regional, or bilateral agreement, or any other similar arrangement, or any domestic legislation, wholly or mainly related to tax.

## **Article 5. Compensation for Damage or Losses**

(1) Investors from one of the Contracting Parties whose investments in the territory of the other Contracting Party are exposed to damages or losses due to war or any other armed conflict, national emergency, revolution, civil disorder, armed insurrection, riots, or other similar events, are treated by the latter Contracting Party with regard to restoring conditions to what they were, restoring losses, compensation or other settlement, in a way no less favorable than that granted by the latter Contracting Party to its investors or to the investors of any third country, whichever is the most favorable.

(2) Without prejudice to paragraph (1), the investors belonging to one of the contracting parties who suffer damage or loss as a result of any of the events referred to in that paragraph in the territory of the other contracting party resulting from:

(A) Confiscation of their property or part thereof by its forces or authorities;

(B) Destroying their property or part thereof by its forces or authorities without this being due to combat operations or without we see that we need the situation.

They shall be given immediate, adequate and effective compensation for the damage or loss suffered by them during the period of confiscation or as a result of the destruction of their property.

(3) For the purposes of this agreement, the compensation includes statutory interventions or procedures undertaken by the Contracting Party, which have the same effect of expropriation or expropriation, and whose effects result in the investor being deprived of his ownership or domination of a fundamental reconciliation in his investment or that may result in a loss or damage to the economic value of the investment such as freezing, restricting the investment, imposing an arbitrary or

exaggerated tax on the investment, the forced sale of all or part of the investment, or any other similar measures.

## **Article 6. Expropriation**

(1) (A) Investments made by investors from either of the Contracting Parties in the territory of the other Contracting Party will not be nationalized, expropriated, dispossessed, or subjected directly or indirectly to procedures with an effect equivalent to nationalization, expropriation, or dispossession (hereinafter referred to as "expropriation") by the other Contracting Party except for a general purpose related to the internal needs of that Contracting Party and in exchange for immediate, adequate and effective compensation, provided that those measures were taken on a non-discriminatory basis and in accordance with generally applicable legal procedures.

(B) The value of this compensation is the actual value of the expropriated investment and is determined and calculated according to internationally recognized principles of valuation based on the fair market value of the expropriated investment at the time immediately before the expropriation procedure or in which the imminent expropriation has become publicly known, whichever is first (hereinafter referred to as "the evaluation date"). This compensation is calculated in a freely convertible currency that the investor chooses on the basis of the market value of the prevailing exchange rate for that currency at the valuation date and includes interest according to the rate (LIBOR) of the interest or its equivalent, from the date of expropriation until the date of payment.

(C) If the fair market value mentioned above cannot be easily ascertained, the compensation is determined based on fair principles, taking into account all factors and circumstances related to it, such as invested capital, the nature and period of the investment, replacement value, consumption, current returns, the calculated cash flow value and the book value and commercial fame. The amount of the compensation fixed for the investor shall be paid immediately.

(2) In light of the principles mentioned in Paragraph 1 and without prejudice to the investor's rights set forth in Article 9 of this Agreement, the affected investor has the right to an immediate review of his case, by a judicial or other independent competent authority of the contracting party who expropriated it, including evaluating his investment and compensation payments for his investment.

(3) For greater certainty, expropriation includes cases in which the Contracting Party expropriates the assets of a company or project established or established under the laws in force in its territory in which an investor of the other contracting party has an investment in it, through the ownership of stocks, shares, and debt securities, or other rights or interests.

(4) Claiming compensation in accordance with the principles and provisions of this article will prevail when the investment is affected materially as a result of the contracting party's interference in any company in which the investment is for investors of the other contracting party.

## **Article 7. Transfer Payments In Respect of Investments**

(1) Each of the Contracting Parties guarantees the investors of the other Contracting Party non-unnecessary delay and the free transfer of investment-related payments into and out of its territory in a freely convertible currency. In the event of delay in making the required transfers, the affected investor is entitled to receive interest for the delay period. This includes conversion on:

(A) The original capital and any additional capital for the maintenance, management and development investment;

(B) The returns;

(C) payments under a contract, including the repayment of principal and interest payments owed performed according to a loan agreement;

(D) royalties and fees for the rights referred to in Article 1, paragraph 1 (d);

(E) The proceeds accrued from the sale or liquidation of all or any part of the investment;

(F) Wages and other compensation for employees contracted from abroad who have a relationship with the investment;

(G) the compensation payments in accordance with Articles 5 and 6;

(H) Payments referred to in Article 8;

(I) Payments arising from dispute settlement..

(2) Transfers are made at the prevailing market exchange rate at the host Contracting Party for investment on the date of

the conversion of the currency to be converted. In the absence of the foreign exchange market, the applied price is the most recent price applied to the investment entered as determined by you will use foreign currency and monetary agencies or the most recent price to convert currencies into special drawing rights, whichever is most favorable to the investor.

## **Article 8. Subrogation**

(1) If a Contracting Party, its designated agency, or any other entity appointed by it, established or which is created in that Contracting Party (the "Guarantor Party"), it makes payments under compensation or a guarantee it has undertaken in connection with an investment in the territory of the other Contracting Party ( "Host"), the host must acknowledge:

(A) a waiver of the guarantor party under the law or a legal agreement on all rights and claims resulting from such investment;

(B) the right of the guarantor party to exercise such rights and implement those claims and to undertake all investment-related obligations based on the principle of subrogation.

(2) In all circumstances, the guarantor party is entitled to:

(A) The same treatment relating to acquired rights and claims and obligations assumed under the assignment referred to in paragraph (1) above;

(B) Any payments received based on those rights and claims, just as the original investor had the right to receive under this agreement in relation to the investment in question.

## **Article 9. Settlement of Disputes between a Contracting Party and an Investor**

(1) Disputes that arise between a Contracting Party and an investor of the other Contracting Party with respect to an investment belonging to the latter in the first mentioned territory, shall be settled as amicably as possible.

(2) If those disputes cannot be settled within six months from the date of either party to the dispute requesting a friendly settlement by submitting a written notice to the other party, the dispute is offered for solution by choosing the investor the party to the dispute through any of the following methods:

(A) According to any pre-agreed dispute settlement procedures;

(B) International arbitration in accordance with the following paragraphs of this article.

(3) In the event that the investor chooses to submit the dispute for settlement to international arbitration, the investor must also submit his written consent to submit the dispute to any of the following bodies:

(A) 1 - The International Center for Settlement of Investment Disputes ("the Center"), which was established on the basis of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature in Washington on March 18, 1965 (the "Washington Convention"), if both Contracting Parties are parties to the Washington Convention, and the Washington Convention applies to the conflict;

2 - The Center, in accordance with the rules governing the additional facilities for administrative procedures by the Center's Secretary (the "Additional Facility Rules"), if the investor's Contracting Party or the Contracting Party to the dispute, but not both, is a party to the Washington Convention;

(B) An arbitral tribunal established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), where the parties to the dispute may amend those rules (the appointing authority referred to in Article 7 of these rules is the Secretary-General of the Center);

(C) An arbitral tribunal to be formed based on the arbitration rules of any arbitral tribunal to be agreed upon between the parties to the dispute.

(4) An investor may, even though the dispute may be submitted to an arbitration binding under the paragraph 3, and before the commencement of the arbitration proceedings or during the procedures, to seek a temporary judicial order before the judicial or administrative courts of the Contracting Party that is a party to the dispute, in order to preserve its rights and interests, provided that the request does not include payments for any damages.

(5) Each of the two Contracting Parties gives their unconditional approval to present the investment dispute with a view to settlement by binding arbitration according to the investor's choice under paragraph 3 (a) and (b) or the mutual agreement of the two parties to the dispute under paragraph (3) (c).

(6) (A) The approval contained in paragraph 5, with the approval contained in paragraph (3) that meets the requirements for written consent of the parties to the dispute for the purposes of each of Chapter Two of the Washington Convention and the Additional Facility Rules, and Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in New York on June 10, 1958 (the "New York Convention"), and Article 1 of the UNCITRAL Arbitration Rules.

(B) Any arbitration under this Article, and as agreed upon by mutual consent between the parties to the dispute, shall be held in a country that is a party to the New York Convention. Claims submitted to arbitration in accordance with the provisions of this Agreement are the result of a relationship or commercial transaction for the purposes of Article 1 of the New York Convention.

(C) Neither of the Contracting Parties shall grant diplomatic protection or make an international claim related to any dispute referred to arbitration unless the other Contracting Party fails to comply with or applies the ruling issued in respect of that dispute, however, diplomatic protection does not include for the purposes of this paragraph 6, exchanging informal diplomatic notes only for the purpose of facilitating dispute settlement.

(7) The arbitral tribunal that is established under this Article shall decide the issues related to the dispute in accordance with those rules of the law as agreed by the parties to the dispute. In the absence of such an agreement, the law of the Contracting Party to the dispute applies, including its rules for conflict of laws, and those special rules generally recognized by international law as the rules apply, also taking into account the provisions relating to this agreement.

(8) The investor who is a natural person who holds the nationality of the Contracting Party to the dispute on the date of the written consent referred to in paragraph (6), which is dominating before the dispute arises between him and that Contracting Party are considered investors belonging to the other Contracting Party, for the purpose of Article 25 (2) (b) of the Washington Convention, and he is treated "as a citizen of another Contracting Party", and for the purpose of Article 1 (6) Of the Additional Facility Rules, he is treated "as a citizen of another country."

(9) The arbitral awards, which may include a decision on interests, are final and binding for both parties to the dispute. Each of the Contracting Parties shall implement any such provision immediately, and take the necessary measures for the effective implementation of those provisions in its territory.

(10) A contracting party must use its immunity in any proceeding, whether judicial, arbitration or otherwise, or in the implementation of any decision or ruling related to an investment dispute between the Contracting Party and an investor of the other Contracting Party. It is also not permissible to establish any counterclaim or right of set-off that the investor in question has received or will receive based on an insurance contract or compensation for damage and any other compensation for all or part of the damages claimed by any third party, whether public or private Including the other Contracting Party, its subdivisions, agencies or organs.

## **Article 10. Settlement of Disputes between the Contracting Parties**

(1) The Contracting Parties shall, as far as possible, settle any dispute relating to the interpretation and application of this Agreement through consultations or other diplomatic channels.

(2) If the dispute is not settled within six months of the date of requesting such consultations or other diplomatic channels by either of the Contracting Parties, and unless the Contracting Parties agree in writing to the contrary, then either Contracting Party may by written notification to the other Contracting Party, submit the dispute to an arbitral tribunal established for this purpose in accordance with the following provisions of this article.

(3) The arbitral tribunal shall be formed as follows: Each of the Contracting Parties shall appoint one member and these two members shall approve a citizen of a third country to be the president of the arbitral tribunal established by the Contracting Parties. These two members are appointed within two months, and the president within four months from the date of notification to either of the Contracting Parties to the other Contracting Party of its intention to submit a dispute to an arbitration court.

(4) If the periods specified in paragraph 3 above are not observed, then either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments.

If the President of the International Court of Justice is a citizen of either of the two Contracting Parties, or if he finds an impediment to the performance of the said mission, he shall ask the Vice-President of the International Court of Justice to make the necessary appointments. If the Vice-President of the International Court of Justice is a citizen of either of the two Contracting Parties, or if he finds an impediment to his performance of the mentioned task, then a member of the International Court of Justice who comes next in seniority who is not a citizen of either of the Contracting Parties is required

to make the necessary appointments.

(5) The arbitration court shall take its decision by majority vote. This decision shall be taken in accordance with this agreement and the accepted and applicable rules of international law, and it shall be final and binding for each of the Contracting Parties. Each of the Contracting Parties shall bear the fees of the member of the arbitral tribunal appointed by that Contracting Party, as well as the fees of its representation in the arbitral procedures. As for the president's fees, as well as any other costs related to the arbitration procedures, they shall be borne equally by both Contracting Parties. However, the arbitral tribunal may, at its discretion, allocate a greater part or all of the costs to be paid by either of the Contracting Parties. The Arbitral Tribunal shall determine its procedures in relation to all other matters.

## **Article 11. Relations between the Contracting Parties**

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

## **Article 12. Application of other Provisions**

If the legislation of either Contracting Party or obligations under existing or emerging international law at a later date between the Contracting Parties in addition to this agreement, including laws, whether public or private, investments made by investors of the other Contracting Party obtain a treatment more favorable than that accorded set forth in this agreement, these laws will prevail over this agreement to the extent that provide more favorable treatment.

## **Article 13. Scope of the Agreement**

This Agreement shall apply to all investments, whether existing ones in the date of entry into force or made after that date by investors of either Contracting Party in the territory of the other Contracting Party to this Agreement.

## **Article 14. Entry Into Force of the Agreement**

Each of the Contracting Parties shall notify the other of the fulfillment of the constitutional requirements necessary for the entry into force of this Agreement, and the Agreement shall enter into force on the thirtieth day after the date of receiving the last notification.

## **Article 15. Duration and Termination**

(1) This agreement will remain in effect for a period of thirty (30) years, and after that it will remain in effect for a similar period or periods, unless either of the Contracting Parties notifies the other Contracting Party in writing one year before the end of the first period or any subsequent period of its intention to terminate this Agreement.

(2) With respect to investments made before the date of the notice of termination of entry into force of this Agreement becomes effective, the provisions of this Agreement remain in effect for a period of twenty (20) years from the date of termination of this Agreement.

In witness thereof the designated representatives of both Contracting Parties have signed this Agreement.

Done in Kuwait on this twelfth day of March of the month of Dhu al-Hijjah 2410 AH in two original copies in the English and Arabic languages, and both texts are equally authentic, in case of difference, the English text shall prevail.

For the Government of the Republic of Philippines

For the Government of the State of Kuwait