

# AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF MONGOLIA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

## PREAMBLE

The Government of the Republic of the Philippines and the Government of Mongolia, hereinafter referred to as the Contracting Parties,

Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create and maintain favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both States,

Have agreed as follows:

## Article I. Definitions

For the purpose of this Agreement:

1. The term "investor" means, with regard to either Contracting Party:

- (a) natural persons who, according to the law of that Contracting Party, are, considered to be its nationals;
- (b) legal entities, including companies, corporations, business associations and other organisations, which are constituted or otherwise duly organised under the law of that Contracting Party and have their seat, together with real economic activities, in the territory of that same Contracting Party;

2. The term "investments" means any kind of asset, admitted in accordance with the laws and regulations of the other Contracting Party, and shall include in particular, though not exclusively:

- (a) movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges, or usufructs;
- (b) shares, parts or any other kinds of participation in companies;
- (c) claims to money, including bonds and debentures, or to any performance having an economic value;
- (d) copyrights, industrial property rights, technological processes, know-how and goodwill;
- (e) business concessions and other rights to conduct economic activities conferred by law or under contract, including concessions to search for, extract or exploit natural resources.

3. The term "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, dividends, royalties and fees.

4. The term territory means:

- (a) with respect to the Government of the Republic of the Philippines, the national territory as defined in Article I of its Constitution.
- (b) with respect to the Government of Mongolia, the territory on which the Mongolian Government is implementing its jurisdiction in accordance with its legislations and international law over which it exercises full sovereignty.

## **Article II. Scope of Application**

The present Agreement shall apply to investments in the territory of one Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party, whether prior to or after the entry into force of the Agreement.

## **Article III. Promotion, Admission**

1. Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.
2. When a Contracting Party shall have admitted an investment on its territory, it shall grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, endeavour to issue the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality.

## **Article IV. Protection, Treatment**

1. Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension or disposal of such investments.
2. Each Contracting Party shall ensure fair and equitable treatment within its territory of the investments of the investors of the other Contracting Party. This treatment shall not be less favourable than that granted by each Contracting Party to investments made within its territory by its own investors, or than that granted by each Contracting Party to the investments made within its territory by investors of the most favoured nation, if this latter treatment is more favourable.
3. The provisions of this Agreement relative to the grant of treatment not less favorable than that accorded to the investors of any third State shall not be construed as to oblige one Contracting Party to extend to the investors of the other Contracting Party benefit, or any treatment, preference or privilege resulting therefrom:
  - (a) any existing or future customs union, common market, free trade area, or regional economic organization or measures leading to the formation of a customs union or free trade area of which either Contracting Party is or may become a member, or
  - (b) any international agreement or arrangement relating wholly or mainly to taxation..

## **Article V. Free Transfer**

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall guarantee those investors the unrestricted transfer of the payment relating to these investments, particularly of:
  - (a) returns;
  - (b) repayment of loans;
  - (c) amounts assigned to cover expenses relating to the management of the investment;
  - (d) royalties and other payments deriving from rights enumerated in Article 1, paragraph (2), letters (c), (d) and (e) of this Agreement.
  - (e) additional capital necessary for the maintenance or development of the investment;
  - (f) the proceeds of the sale or of the partial or total liquidation of the investment, including possible increment values;
  - (g) earnings of natural persons.
2. Transfers shall be effected without delay in a freely convertible currency. Such transfers shall be made at the rate of exchange applicable on the date of transfer.

## **Article VI. Dispossession, Compensation**

1. Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalization or any

other measures having the same nature or the same effect against investments of investors of the other Contracting Party, unless the measures are taken in the public interest, or a non-discriminatory basis, and under due process of law, and provided that provisions be made for effective and adequate compensation. The amount of compensation shall include interest, from the date of dispossession until payment, shall be settled in a freely convertible currency and paid without delay to the person entitled thereto without regard to its residence or domicile.

2. The investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or rebellion, which took place in the territory of the other Contracting Party shall benefit, on the part of this latter, from a treatment in accordance with Article IV, paragraph (2) of this Agreement as regards restitution, indemnification, compensation or other settlement.

## **Article VII. Principle of Subrogation**

Where one Contracting Party has granted any financial guarantee against non-commercial risks in regard to an investment by one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party by virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the first Contracting Party.

## **Article VIII. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting**

1. With a view to an amicable solution of disputes between a Contracting Party and an investor of the other Contracting Party and without prejudice to Article IX of this Agreement, consultations will take place between the parties concerned.

2. If these consultations do not result in a solution within six months from the date of request for consultations, the investor may submit the dispute, at his choice, for settlement to:

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

(b) the International Center for Settlement of Investment Disputes (ICSID) instituted by the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, opened for signature at Washington, on 18 March 1965; or

(c) an ad hoc tribunal which unless otherwise agreed upon by the parties to the dispute shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other Contracting Party does not abide by and comply with the award rendered by such arbitral tribunal.

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

1. Disputes between Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

2. If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator and these two arbitrators shall nominate a chairman who shall be a national of a third State which has a diplomatic relation with both Contracting Parties.

3. If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

4. If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

5. If, in the cases specified under paragraphs (3) and (4) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if he is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

6. Subject to other provisions made by the Contracting Parties, the tribunal shall determine its own procedure.
7. Each Contracting Party shall bear the cost of the arbitrator it has appointed and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.
8. The decisions of the tribunal are final and binding for each Contracting Party.

## **Article X. Other Commitments**

1. If the provisions in the legislation of either Contracting Party or rules of international law entitle investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such provisions shall to the extent that they are more favourable prevail over this Agreement.
2. Each Contracting Party shall observe any obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

## **Article XI. Final Provisions**

1. This Agreement shall enter into force on the first day of the following, month after the date of the later notification by the Contracting Parties in writing, through diplomatic channels, that their internal legal requirements for the entry into force of the Agreement have been complied with.
2. This Agreement shall remain in force for a period of ten (10) years. It shall remain in force thereafter until either Contracting | Party notifies the other Contracting Party in writing of the intention to terminate this Agreement. The notice of termination shall become effective one year after the date of notification.
3. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles I to XI shall remain in force for a further period of ten (10) years from the date of termination of the present Agreement.

## **Part Conclusion**

Done at Manila, Philippines on September 1, 2000.

FOR THE GOVERNMENT OF MONGOLIA

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES