

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE RUSSIAN FEDERATION AND THE GOVERNMENT OF THE REPUBLIC OF PHILIPPINES ON THE PROMOTION AND MUTUAL PROTECTION OF CAPITAL INVESTMENTS**

The Government of the Republic of the Philippines and the Government of the Russian Federation, hereafter referred to as the Contracting Parties.

Desiring to create favourable conditions for the realization of investments by investors of one Contracting Party in the territory of the other Contracting Party.

Recognizing that the promotion and mutual protection of investments on the basis of the present Agreement will stimulate the development of the mutually beneficial commercial and economic cooperation.

Have agreed as follows:

## **Article I. Definitions**

For the purposes of this Agreement:

1. The term "investor" shall mean with regard to each Contracting Party:

With regard to the Republic of the Philippines:

(a) Citizens of the Philippines;

(b) Legal entities which are constituted or otherwise duly organized under Philippine laws, as well as companies not established under Philippine law but effectively controlled by Philippine citizens or by companies established under Philippine laws.

With respect to the Russian Federation:

(a) Any natural person who is a citizen of the state of the Russian Federation and who has a legal right in accordance with the legislation of the Russian Federation to make investments in the territory of the Republic of the Philippines;

(b) Any legal person established under the existing legislation in the territory of the Russian Federation provided the legal person is competent, in accordance with the legislation of the Russian Federation, to make investments in the territory of the Republic of the Philippines.

2. The term "investments" shall mean all kinds of assets which investors of one Contracting Party invest in the territory of the other Contracting Party in accordance with the latter Contracting Party's legislation and in particular:

(a) Movable and immovable property as well as property rights thereto;

(b) Shares, stocks and other forms of participation in business enterprises or companies;

(c) Claims to money invested for the purpose of creating economic values or on services having economic value related to investments;

(d) Exclusive rights to intellectual property (copyrights, patents, industrial samples, models, trade marks and service marks), technology, information having commercial value and "know-how";

(e) Rights conferred by law or under contract to conduct economic as well as commercial activity related in particular to exploration, development, extraction and exploitation of natural resources.

Any alteration of the form in which assets have been invested or reinvested shall not affect the character of investment on condition that this change is not in contradiction with the legislation of the Contracting Party in the territory of which the investments were made.

3. The term "returns" shall mean the amounts yielded as a result of investments according to paragraph 2 of this Article and includes in particular, profit, dividends, interest, license fees and other fees. paragraph 2 of this Article and includes in particular, profit, dividends, interest, license fees and other fees.

4. The term "territory" shall mean:

(a) With respect to the Republic of the Philippines:

The territory of the Republic of the Philippines as well as its exclusive economic zone and continental shelf, where the Republic of the Philippines exercises sovereign rights and jurisdiction in accordance with its national laws and international law.

(b) With respect to the Russian Federation:

The territory of the Russian Federation as well as its exclusive economic zone and continental shelf, where the Russian Federation exercises sovereign rights and jurisdiction in accordance with its national laws and international law.

5. The term "Legislation of the Contracting Party" shall mean the Constitution, laws, regulations and other issuances of the State of the Contracting Party in respect of both Contracting Parties.

## **Article II. Promotion and Admission of Investments**

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its legislation.

2. Each Contracting Party shall, in accordance with its legislation, guarantee to investors of the other Contracting Party full protection and security to investments made by investors of the other Contracting Party.

## **Article III. Treatments of Investments**

1. Each Contracting Party shall ensure in its territory fair and equitable treatment of the investments made by investors of the other Contracting Party and activities in connection with such investments and exclude the use of discriminatory measures that might hinder management and administration of investments.

2. Each Contracting Party shall in its territory accord the investors of the other Contracting 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. Each Contracting Party shall reserve the right to determine economic fields and areas of activity where activities of foreign investors shall be excluded or restricted.

4. The provisions of the preceding paragraphs shall not be construed as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

- Participation in any customs union, economic union, common market, free trade area, or regional economic organization of which either Contracting Party is a member, or
- Agreements between the Russian Federation and the states, which had earlier formed part of the Union of Soviet Socialist Republics, or
- Any international agreement or arrangement relating wholly or mainly to taxation.

## **Article IV. Entry and Sojourn of Key Personnel**

1. Each Contracting Party shall, in accordance with its legislation of entry and sojourn of non-citizens, permit natural persons who are investors of the other Contracting Party and key personnel employed by companies of that other Contracting Party to enter and remain in its territory for the purpose of engaging in activities associated with investments.

2. Each Contracting Party shall, in accordance with its legislation, permit investors of the other Contracting Party who made investments in the territory of the first Contracting Party to employ any employee of key personnel of their choice

regardless of citizenship on condition that such employee has the permission to enter, sojourn and work in the territory of the first Contracting Party and such job corresponds to conditions and time limits stipulated in such employee's permission.

## **Article V. Transparency of Laws**

Each Contracting Party shall, with a view to promoting the understanding of its laws that pertain to or affect investments in its territory made by investors of the other Contracting Party, provide such laws to the public and make them readily accessible.

## **Article VI. Expropriation**

1. Investments by investors of one Contracting Party made in the territory of the other Contracting Party, shall not be expropriated, nationalized or subjected to measures tantamount to expropriation or nationalization ("hereinafter referred to as expropriation"), except when such measures are taken for public interests and in accordance with the procedure established by the legislation, when they are not discriminatory and are followed by prompt, adequate and effective compensation.

2. The compensation shall correspond to the market value of the expropriated investments immediately before the time when the actual or impending expropriation was become known. Compensation shall be paid without unreasonable delay in freely convertible currency and shall be freely transferable from the territory of one Contracting Party to the territory of the other Contracting Party. Until the date of payment the amount of compensation shall be subject to accrued interest based on the current interest rate or the Contracting Party in the territory of which the investments were made.

## **Article VII. Compensation for Losses**

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

## **Article VIII. Transfers of Payment**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, upon fulfillment by them of all. tax obligations, a free transfer abroad of payments related to their investments, and in particular:

(a) The initial capital and additional amounts to maintain or increase an investment;

(b) Returns;

(c) Funds in repayment of loans recognized by the Contracting Parties as investments;

(d) Proceeds from sale or full or partial liquidation of an investment;

(e) Compensation, stipulated in Articles VI and VII of this Agreement;

(f) Wages and other remuneration received by key personnel employed by companies of the other Contracting Party who have a right to work in the territory of the First Contracting Party in relation to an investment.

2. Transfers shall be made without delay in freely convertible currency at the rate of exchange applicable on the date of a transfer pursuant to the existing exchange regulations of the Contracting Party in whose territory the investments were made.

## **Article IX. Subrogation**

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

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

## **Article X. Settlements of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Any dispute between one of the Contracting Parties and an investor of the other Contracting Party arising in connection with an investment, including disputes relating to the amount, conditions and procedure of payment of a compensation in accordance with Article VI or to the procedure of transfer of payments set in Article VIII of this Agreement shall be subject to a written notification accompanied by a detailed commentary which are sent by the investor to the Contracting Party involved in the dispute. The parties to a dispute shall, to the extent possible, seek a settlement to this dispute by way of negotiations. Article VI or to the procedure of transfer of payments set in Article VIII of this Agreement shall be subject to a written notification accompanied by a detailed commentary which are sent by the investor to the Contracting Party involved in the dispute. The parties to a dispute shall, to the extent possible, seek a settlement to this dispute by way of negotiations.

2. In case the dispute cannot be settled in such a manner during a period of six (6) months starting from the date on which, written notification referred to in paragraph 1 of this Article was sent, it will be submitted for consideration to: paragraph 1 of this Article was sent, it will be submitted for consideration to:

(a) A competent court or arbitration court of the Contracting Party in the territory of which the investments were made; or

(b) The Arbitration Institute of the Chamber of Commerce of Stockholm; or

(c) An ad hoc arbitration court in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. An arbitration decision shall be final and binding upon both parties to the dispute. Each Contracting Party shall undertake to enforce this decision in accordance with its legislation.

4. Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and a Contracting Party has failed to abide by, or to comply with the award rendered by the competent court.

## **Article XI. Settlements of Disputes between the Contracting Party**

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall be settled by way of negotiations.

2. If a dispute is not settled in such a way within six (6) months from the beginning of the negotiations, it shall upon the request of either Contracting Party be submitted to arbitration court.

3. Such arbitration court shall be constituted for each individual case in the following manner. Each Contracting Party shall appoint one member of the arbitration court within two (2) months of the receipt of the request for arbitration. Those two members shall then select a national of a third state which has diplomatic relations with both Contracting Parties who on the approval of the two Contracting Parties shall be appointed as the Chairman of the arbitration court within a month from the date of the appointment of the other two members.

4. If within the time-limits specified in paragraph 3 of this Article, the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make such appointments. If the President of the International Court of Justice is a national of either Contracting Party or is otherwise unable to discharge the said function, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice-President of the International Court of Justice is a national of either Contracting Party or is otherwise unable to discharge the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitration court shall reach its decision by a majority of votes. Such decision shall be final and binding upon the Contracting Parties. Each Contracting Party shall bear the costs of activities of its own member of the court and of its representation in the arbitration proceedings; the costs related to the activities of the Chairman of the arbitration court and other costs shall be borne in equal parts by the Contracting Parties. The court may, however, in its decision direct that a higher portion of costs shall be borne by one of the Contracting Parties and such decision shall be binding on both Contracting Parties. The arbitration court shall establish its own procedure independently.

## **Article XII. Consultations**

The Contracting Parties shall consult at the request of either of them, on the matter concerning the interpretation or application of this Agreement.

## **Article XIII. Entry Into Force and Duration of the Agreement**

1. Each Contracting Party shall notify the other Contracting Party in written form in the completion of his internal procedures required for the entry into force of this agreement. This Agreement shall enter into force on the date of the latter of the two Applications.
2. This Agreement shall remain in force for a period of fifteen (15) years. thereafter it shall remain in force for twelve (12) months from the date on which one Contracting Party shall have notified in written form the other Contracting Party of its mention to terminate this Agreement.
3. This Agreement may be amended by mutual consent in written form of Contracting Parties. Any amendment shall enter into force after each Contracting Party has notified in written form the other Contracting Party that it has completed all internal requirements for entry into force of such amendment.
4. With respect to the investments made to the date of termination of this agreement and to which this Agreements otherwise applies, the provisions of the other Articles of this Agreement shall thereafter continue to be effective for the next fifteen (15) years from the date of termination.

Done in Moscow on September 12, 1997, in duplicate, each Russian and English, both texts being equally authentic.

For the Government of the Russian Federation

For the Government of the Republic of the Philippines