

Agreement between the Government of the French Republic and the Government of the Republic of the Philippines on the reciprocal encouragement and protection of investments

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

Desiring to strengthen economic cooperation between the two States and to create favorable conditions for French investments in the Philippines and Filipinos in France,;

Convinced that the promotion and protection of such investments will be conducive to the stimulation of capital and technology transfer between the two countries in the interest of their economic development,

Have agreed as follows:

Article 1.

For the purposes of this Agreement:

1. The term "investment" means all assets, such as property rights and interests of all kinds, and in particular, though not exclusively:

- a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, usufructs, deposits and similar rights;
- b) Securities, shares and claims of a company incorporated in the territory of one of the Contracting Parties and all other forms of participation in a company, including share premiums, minority or indirect participation;
- c) The obligations and rights, claims to any performance having economic value;
- d) Copyrights, industrial property rights, such as patents, licences, trademarks, industrial designs or models, technical processes, trade names and goodwill;
- e) Concessions granted by law or under contract, including concessions to search for, culture, extract or exploit natural resources located in the territory of the Contracting Parties.

It is understood that such assets must be or have been invested in accordance with the legislation of the Contracting Party in whose territory the investment is made before or after the entry into force of this Agreement.

Any alteration of the form in which assets are invested shall not affect their classification as investment, provided that such change is not contrary to the legislation of the Contracting Party in whose territory the investment is made.

2. The term "national" means natural persons having the nationality of one of the Contracting Parties.

3. The term "companies" means any juridical person in the territory of one of the Contracting Parties in accordance with their legislation and having its registered office or directly or indirectly controlled by nationals of either Contracting Party, or by a juridical person with its head office in the territory of one of the Contracting Parties and in accordance with its law.

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

Investment income and in case of reinvestment, income from their reinvestment shall enjoy the same protection as the investment.

5. This Agreement shall apply to the territory of each of the Contracting Parties. The term "territory" means:

a) With regard to the Republic of the Philippines, the national territory which includes the archipelago of the Philippines, with all islands and waters contained therein, and all other territories on which the Philippines has sovereignty or jurisdiction in the area of land, water, airspace and territorial sea, including the seabed and subsoil and foundations and other underwater areas. the waters surrounding, separating and between the islands of the archipelago, regardless of their dimensions, scope and form part of the internal waters of the Philippines;

b) As regards the French Republic, the territory of the French Republic, which, within the meaning of the present Agreement, includes the maritime area, hereinafter referred to as defined as the economic zone and the continental shelf extending beyond the limits of the territorial waters of each of the Contracting Parties and on which they have, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploitation and exploration for and preservation of natural resources.

Article 2.

Each Contracting Party recognizes and encourages, within the framework of its laws and the provisions of this Agreement, all investments made by companies and nationals of the other party in its territory.

Article 3.

Each Contracting Party undertakes to provide in its territory fair and equitable treatment in accordance with the principles of international law, to investments of nationals and companies of the other party and to ensure the enjoyment of the rights thus recognized are not affected.

Any restrictions unfair purchase and transport of raw materials and auxiliary materials, energy and fuel and means of production or operation of any kind, interference with the sale and transport of goods within the country and abroad, as well as any other measures having an effect equivalent, are considered barriers of fact or law in fair and equitable treatment.

The Contracting Parties shall consider sympathetically, within the framework of their national legislation, applications for entry and residence permits, and movement of nationals of one Contracting Party in respect of an investment in the territory of the other Contracting Party.

Article 4.

Each Contracting Party shall in its territory to nationals or companies of the other Contracting Party as regards their investments made in accordance with the law of that Contracting Party and activities associated with such investments, treatment no less favourable than that accorded to its own nationals or companies or the treatment accorded to nationals or companies of the most favoured nation, whichever is more favourable. In this connection, nationals who are authorised to work in the territory of either Contracting Party shall enjoy adequate physical facilities for the performance of their professional activities. the provisions of the preceding paragraph shall not be construed so as to oblige one Contracting Party to extend to nationals or companies of the other Contracting Party any treatment, preference or privilege that it will pay under:

a) Any customs union, free trade area, common external tariff area or existing or future regional economic organization to which one of the Contracting Parties is or may become a party;

b) Any international agreement or any domestic legislation relating wholly or partly tax matters.

Article 5.

1. Investments made by companies or nationals of either Contracting Party shall enjoy in the territory of other Contracting Party full protection and security.

2. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measures the effect of which is, directly or indirectly dispossessing nationals and companies within their territory of the other party investments owned, except for a public purpose and provided that they are neither discriminatory nor contrary to a specific engagement.

All dispossession measures that might be taken shall be subject to the payment of prompt and adequate compensation shall be calculated on the basis of the market value of the affected investments immediately before the intention of dispossession will be made public.

Such compensation, its amount and has no later than the date of dispossession. The compensation shall be paid without delay, and effectively realisable freely transferable.

3. Companies or nationals of either Contracting Party whose investments have suffered losses due to war or any other armed conflict, revolution, state of emergency or national revolt occurring in the territory of the other Contracting Party benefit, on the part of this latter, from treatment no less favourable than that accorded to its own nationals or companies or to those of the most favoured nation.

Article 6.

Each Contracting Party in whose territory investments have been made by nationals or companies of the other Contracting Party shall grant those nationals or companies the free transfer of investments, if required by its laws, duly registered by the appropriate government agencies, and in particular, though not exclusively, shall guarantee the free transfer of:

- a) Profits, dividends, interests and other current income;
- b) Royalties arising out of intangible rights referred to in paragraph 1 (d) and (e) of Article 1;
- c) Payments made for the reimbursement of loans contracted regularly;
- d) The proceeds of the sale of or the partial or total liquidation of the investment, including the value of the investment capital;
- e) Compensation of dispossession or loss as provided for in Article 5, paragraphs 2 and 3 above.

The nationals of either Contracting Party who have been authorised to work in the territory of the other Contracting Party in respect of an approved investment shall also be authorised to transfer their country of origin in a proportion appropriate remuneration.

The transfers referred to in the preceding paragraphs shall be effected without delay in the official rate of exchange applicable on the date of transfer.

Article 7.

To the extent that the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad, such guarantee may be granted, on a case-by-case basis, to investments made by nationals or companies of that Party in the territory of the other Party.

Investments of nationals and companies of one Contracting Party in the territory of the other party may request the Security referred to in the preceding paragraph only if they have previously obtained accreditation of that other party.

Article 8.

Any investment dispute between a Contracting Party and a national or company of the other Contracting Party shall be settled amicably between the two parties concerned.

If such a dispute cannot be settled within six months from the time at which it was raised by either party to the dispute, the Contracting Party that is a party to the dispute consents to any national or company of a party to the dispute to its submission for conciliation or arbitration by the International Centre for the Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington on 18 March 1965.

Article 9.

If one of the Contracting Parties, by virtue of a guarantee given for an investment made in the territory of the other Party, makes payments to one of its nationals or to one of its companies, it shall thereby be subrogated to the rights and actions of such national or company.

Such payments shall not affect the rights of the holder of the security to resort to ICSID or to continue its actions brought before the Tribunal until the end of the procedure.

Article 10.

Investments in respect of a particular undertaking of one of the Contracting Parties with respect to nationals and companies of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, the terms of that commitment to the extent that it is more favourable provisions than those laid down in this Agreement.

Article 11.

1. Disputes concerning the interpretation or application of this agreement should, if possible, be settled through diplomatic channels.
2. If, within a period of six months from the time at which it was raised by either Contracting Party, the dispute is not settled, it shall be submitted, at the request of either Contracting Party to an arbitral tribunal.
3. The Tribunal shall be constituted for each individual case as follows: each Contracting Party shall appoint one member and these two Members shall designate by common agreement the third member who shall be a national of a third country and shall be appointed Chairman of the Tribunal by both Contracting Parties. All members shall be appointed within three months from the date one Contracting Party has informed the other Contracting Party of its intention to submit the dispute to arbitration.
4. If the periods specified in paragraph 3 above have not been made, either Contracting Party, in the absence of any other agreement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if he is otherwise prevented from exercising this function, the most senior Under-Secretary-General who is not a national of either Contracting Party shall make the necessary appointments.
5. The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be final and enforceable automatically to the Contracting Parties.

The tribunal shall determine its own rules. It interprets the award at the request of either Contracting Party. Unless the tribunal decides otherwise in light of the particular circumstances, the expenses of the arbitral proceedings, including the business of the arbitrators shall be shared equally by the Contracting Parties.

Article 12.

Each Party shall notify the other of the completion of the internal procedures required for the entry into force of this Agreement, which shall take effect one month after the date of receipt of the last notification.

This agreement is concluded for an initial period of ten years. It shall remain in force after the term unless one of the Parties denounces through diplomatic channels with one year notice.

On the expiry of the period of validity of the present Agreement investments over which it was in force will continue to benefit from the protection of its provisions for a further period of twenty years.

For the Government of the French Republic:

Edmond Alphandéry

For the Government of the Republic of the Philippines:

Rizalino S. Navarro

PROTOCOL

Upon the signing of the agreement this same day between the Government of the French Republic and the Government of the Republic of the Philippines on the reciprocal encouragement and protection of investments, the Contracting Parties have also agreed upon the following provisions, which shall form an integral part of the agreement:

With respect to Article 4:

The provisions of this Article shall not be construed to require the Republic of the Philippines to extend to French companies or nationals the benefit of any treatment, preference or privilege accorded to nationals or companies of the Republic of the

Philippines in accordance with:

- the provisions of Article XII of the Constitution of the Republic of the Philippines relating to the ownership of land ;
- Central Bank Circular No. 572, Series 1977, dated July 27, 1977 on Domestic Borrowing, as amended on October 1, 1993.

With respect to Section 5:

The compensation in case of dispossession referred to in Article 5 shall yield interest calculated at the market interest rate in force in the country from the date of dispossession until the date of payment.

For the Government of the French Republic :

Edmond Alphandéry

For the Government of the Republic of the Philippines:

Rizalino S. Navarro