

AGREEMENT BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE SWISS CONFEDERATION ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

Preamble

The Swiss Federal Council and the Government of the Republic of the Philippines

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

Intending to create and maintain favourable 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" shall mean:

(a) In respect of the Swiss Confederation:

(i) Natural persons who, according to Swiss law, are considered to be its nationals:

(ii) Companies including corporations, partnerships, associations and other organisations, which are constituted or otherwise duly organised under Swiss law, as well as companies not established under Swiss law but effectively controlled by Swiss nationals or by companies established under Swiss law;

(b) In respect of the Republic of the Philippines:

(i) Natural persons who are citizens of the Philippines within the meaning of its Constitution;

(ii) Corporations, partnerships or other associations, incorporated or constituted and actually doing business under the laws in force in any part of the territory of the Philippines and having therein a place of effective management.

2. The term "investments" shall include every kind of asset, in particular:

(a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges, usufructs, and similar rights;

(b) Shares, parts, or any other kind of participation in companies;

(c) Claims to money or to any performance having an economic value;

(d) Copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how, and goodwill;

(e) Concessions under public law, including concessions to search for, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance with the law.

3. The term "returns" means the amounts yielded by an investment and includes in particular, profits, interest, capital gains, dividends, royalties, and fees.

4. The term "territory" refers to the territory of the State concerned as defined by the respective Constitution and other pertinent law.

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 in accordance with its laws and regulations 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. Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, or disposal of such investments.

2. Each Contracting Party shall in its territory accord investments or returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State, whichever is more favourable to the investor concerned.

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

4. The treatment of the most favoured nation according to this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other the benefit of any treatment, preference or privilege resulting from:

- a) Any existing or future free trade area, customs union, common market, economic union, or any similar regional economic organisation, to which either Contracting Party is or may become a party, or
- b) Any international agreement relating wholly or mainly to taxation.

Article V. Free Transfer

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the transfer without delay in a freely convertible currency of payments in connection with an investment, particularly of:

- a) Returns;
- b) Amounts related to loans incurred, or other contractual obligations undertaken, for the investment;
- c) Royalties and other payments deriving from rights enumerated in Article I, paragraph (2) letters (c), (d) and (e) of this Agreement;
- d) Additional contributions of capital necessary for the maintenance or development of the investment;
- e) The proceeds of the partial or total sale or liquidation of the investment, including possible increment values.

2. Transfers of currency shall be made at the market rate of exchange prevailing 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, on a non-discriminatory basis, and under due process of law, and provided that provisions be made for effective and adequate compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriatory action was taken or became public knowledge, whichever is earlier. 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 the latter, from a treatment in accordance with Article IV of this Agreement as regards restitution, indemnification, compensation or other settlement.

Article VII. Principle of Subrogation

If one Contracting Party pays an indemnity to one of its investors in relation with an investment in the territory of the other Contracting Party under a guarantee against non-commercial risks, the latter Contracting Party shall recognize the subrogation of the former in the rights or titles of the investor.

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

1. For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party and without prejudice to Article IX of this Agreement (Disputes between Contracting Parties), 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 either to the national jurisdiction of the Contracting Party in whose territory the investment has been made or to international arbitration. In the latter event the investor has the choice between

(a) The International Center for the Settlement of Investment Disputes (I.C.S.I.D) 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;

(b) An ad hoc arbitral 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 (U.N.C.I.T.R.A.L.).

3. A company which has been incorporated or constituted according to the laws in force in the territory of one Contracting Party and which before a dispute arises was under the control of investors of the other Contracting Party shall, in accordance with Article 25 (2) (b) of the Convention of Washington, be treated as a company of the other Contracting Party.

4. The Contracting Party which is a party to the dispute shall not at any time during the procedures, assert as a defence its immunity or the fact that the investor has received compensation under an insurance contract covering the whole or part of the incurred damage or loss.

5. 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 an arbitral tribunal.

6. The arbitral award shall be final and binding for the parties involved in the dispute, and shall be executed according to national law.

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.

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 is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or 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 procedure.
7. Each Contracting Party shall bear the cost of its own member of the tribunal 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. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two 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 specific investments in its territory by investors of the other Contracting Party.

Article XI. Final Provisions

1. This Agreement shall enter into force on the day when both Governments have notified each other that they have complied with the legal requirements for the entry into force of international agreements, and shall remain binding for a period of ten years. Unless written notice of termination is given six months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for a period of five years, and so forth.
2. In case of official notice as to the termination of the present Agreement, the provisions of Articles I to X shall continue to be effective for a further period of ten years for investments made before official notice was given.

Done in duplicate, at _____, on _____, each in English and French, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

FOR THE SWISS CONFEDERATION