

**AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF  
THE PHILIPPINES AND THE GOVERNMENT OF THE REPUBLIC OF  
INDIA FOR THE PROMOTION AND PROTECTION OF  
INVESTMENTS**

**PREAMBLE**

The Government of the Republic of the Philippines and the Government of the Republic of India (hereinafter referred to as the "Contracting Party");

DESIRING to intensify economic cooperation to the mutual benefit of both countries;

INTENDING to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

RECOGNIZING that the reciprocal promotion and protection of such foreign investments favour economic prosperity of both countries;

HAVE AGREED AS FOLLOWS:

**ARTICLE I  
DEFINITIONS**

For the purposes of this Agreement:

1. "Investment" means every kind of asset established or acquired, in accordance with the laws of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:

- a. movable and immovable property as well as other rights such as mortgages, liens, pledges or usufructs;
- b. shares of stock and debentures of a company and any other similar forms of participation in a company;
- c. rights to money or to any performance under contract having a financial value;
- d. intellectual property rights in accordance with the relevant laws of the respective Contracting Party;
- e. business concessions conferred by law or under contract, including concessions to search for and extract or exploit natural resources.

2. "Nationals" means:

- a. in respect of the Republic of the Philippines: citizens of the Philippines within the meaning of Article IV of its Constitution;
- b. in respect of the Republic of India: persons deriving their status as Indian nationals from the law in force in India.

3. "Companies" means:

a. In respect of the Republic of the Philippines: corporations, partnerships or other associations, incorporated or constituted and actually doing business under the laws in force in any part of the territory of that Contracting Party wherein a place of effective management is situated. Provided that any particular company may be excluded from the foregoing definition by mutual agreement between the Contracting Parties on grounds of the need to maintain public order, to protect essential security interest or to fulfill commitments relating to peace and security;

b. In respect of the Republic of India: corporations; firms and associations incorporated or constituted or established under the law in force in any part of India.

4. "Investor" means any national or company of a Contracting Party, as defined in paragraphs 2 and 3 above.

5. "Returns" means the amounts yielded by an investment such as, but not limited to, profit, interest, capital gains, dividends, royalties and fees.

6. "Territory" means:

a. in respect to the Republic of the Philippines, the national territory as defined in Article I of its Constitution;

b. in respect to the Republic of India: the territory of the Republic of India including its territorial waters and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of India has sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws in force, the 1982 United Nations Convention on the Law of the Sea and International Law.

## **ARTICLE II SCOPE OF THE AGREEMENT**

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, accepted as such in accordance with its laws and regulations, whether made before or after the coming into force of this Agreement.

## **ARTICLE III PROMOTION AND PROTECTION OF INVESTMENTS**

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and admit such investments in accordance with its laws and policy.

2. Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party.

## **ARTICLE IV TREATMENT**

1. Each Contracting Party shall accord fair and equitable treatment to investments made by investors of the other Contracting Party in its territory.
2. Each Contracting Party shall accord admitted investments of the investors of the other Contracting Party in its territory a treatment which is no less favourable than that accorded to investments made by its own investors or by investors of any third country, whichever is more favourable.
3. In addition, each Contracting Party shall accord to investors of the other Contracting Party, treatment which shall not be less favourable than that accorded to investors of any third State.
4. The provisions of paragraphs 1, 2 and 3 above shall not be construed so as to oblige the other Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:
  - 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 or similar international agreement to which it is or may become a party; or
  - b. any matter pertaining wholly or mainly to taxation.

## **ARTICLE V EXPROPRIATION**

1. Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose in accordance with law on a non-discriminatory basis. Such measure shall be accompanied by provisions for payment of fair and equitable compensation without undue delay. Such compensation shall amount to the genuine value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a fair and equitable rate until the date of payment, shall be made without unreasonable delay, be effectively realizable and be freely transferable.
2. The investor affected shall have right, under the law of the Contracting Party making the expropriation, to review, by a judicial authority or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in the paragraph above. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out expeditiously.
3. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to ensure fair and equitable compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

## **ARTICLE VI COMPENSATION FOR LOSSES**

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency or civil disturbances in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable.

## **ARTICLE VII TRANSFERS**

1. Each Contracting Party shall permit all funds of an investor of the other Contracting Party related to an investment in its territory to be freely transferred, without unreasonable delay and on a non-discriminatory basis. Such funds may include:

- a. Capital and additional capital amounts used to maintain and increase investments;
- b. Net operating profits including dividends and interest in proportion to their share-holdings;
- c. Repayment of loan including interest thereon, relating to the investment;
- d. Payment of royalties and service fees relating to the investment;
- e. Proceeds from sales of their shares;
- f. Proceeds received by investors in case of sale or partial sale of liquidation;
- g. The earnings of citizens/nationals of one Contracting Party who work in connection with investment in the territory of the other Contracting Party.

2. Nothing in paragraph (1) of this Article shall affect the transfer of any compensation under Article VI of this Agreement.

3. Such transfers shall be made in the currency of the original investment or any other convertible currency at the prevailing market rate of exchange on the date of transfer.

## **ARTICLE VIII SUBROGATION**

1. In case one Contracting Party or its designated agency has granted any insurance or guarantee agreement against noncommercial risks in respect of an investment made by its own investors in the territory of the other Contracting Party and has made payment to such investors under the guarantee, the latter Contracting Party shall recognize that the first Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and assert the claims of those investors. The subrogated rights or claims shall not exceed the original rights or claims of such investors.

2. Where a Contracting Party has made a payment to its investor and has taken over rights and claims of the investor, that investor shall not, unless authorized to