

## **AGREEMENT BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE STATE OF KUWAIT FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Republic of the Philippines and the Government of the State of Kuwait, (hereinafter referred to as the Contracting Parties);

Desiring to create favourable conditions for the development of economic cooperation between them and in particular for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the promotion and reciprocal protection of such investments will be conducive to the stimulation of business initiative and to the increase of prosperity in both Contracting Parties;

Have agreed as follows:

### **ARTICLE 1 DEFINITIONS**

For the purpose of this Agreement:

1. The term "investment" shall mean every kind of asset or right owned or controlled directly or indirectly through an investor of a third state, by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws and, in particular, though not exclusively includes:

(a) movable and immovable property and any related property rights such as leases, mortgages; liens, pledges and usufructs;

(b) shares, stocks, and other forms of debt interests in a company, and other debts and loans and securities issued by any investor of a Contracting Party;

(c) claims to money and claims to any other assets or performance pursuant to contract having an economic value;

(d) intellectual property rights, including, but not limited to, copyrights, trademarks, patents, industrial designs and patterns and technical processes/ know-how, trade secrets, trade names and goodwill;

(e) any right conferred by law, contract or by virtue of any licences or permits granted pursuant to law, including rights to prospect, explore, extract, or utilize natural resources, and rights to undertake other economic or commercial activities or to render services.

The term "investment" shall also apply to "returns" retained for the purpose of re-investment and to proceeds from "liquidation" as these terms are defined hereinafter.

Any change in the form in which assets or rights are invested or reinvested shall not affect their character as investments.

2. The term "investor" shall mean:

- (a) a natural person holding the nationality or citizenship of the Contracting Party in accordance with its applicable laws;
- (b) the Government of that Contracting Party;
- (c) any legal person constituted or incorporated under the laws and regulations of that Contracting Party, such as institution, development funds, agencies, foundation and other statutory establishments and authorities, and companies and actually doing business under the laws of the respective Party and have their headquarters in the territory of the respective Party where effective management is carried out.

3. The term "company" shall mean any legal entity, whether or not organized for pecuniary gain, and whether privately or governmentally owned or controlled, which is constituted under the laws of a Contracting Party or is owned or effectively controlled by investors of a Contracting Party, and includes a corporation, trust, partnership, sole proprietorship, branch, joint venture, association or other similar organization.

4. The term "returns" shall mean amounts yielded by an investment, irrespective of the form in which they are paid, and in particular, though not exclusively, include profits, interest, capital gains, dividends, royalties, and management, technical assistance or other payments or fees, and payments in kind, regardless of its type.

5. The term "liquidation" shall mean any disposal effected for the purpose of completely or partly giving up an investment.

6. The term "territory" shall mean:

(a) with respect to the Republic of the Philippines as provided in Article I of its 1987 Constitution, the national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial, and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines;

(b) with respect to the State of Kuwait, territory of the State of Kuwait including any area beyond the territorial sea which in accordance with international law has been or may hereafter be designated under the laws of the State of Kuwait, as an area over which it may exercise sovereign rights or jurisdiction.

7. The term "freely convertible currency" shall mean any currency that the international Monetary Fund determines, from time to time, as freely usable currency in accordance with the Articles of Agreement of the International Monetary Fund and any amendment thereto.

8. The term "without delay" shall mean such period as is normally required for the completion of necessary formalities for the transfer of payments. The said period

shall commence on the day on which the request for transfer has been submitted and may on no account exceed one month.

## **ARTICLE 2**

### **ADMITTANCE AND ENCOURAGEMENT OF INVESTMENTS**

1. Each Contracting Party shall, in its territory and in accordance with its applicable laws and regulations/ admit and encourage of investments by investors of the other Contracting Party.
2. Each Contracting Party shall, in respect of investments admitted in its territory, grant such investments all necessary permits, consents, approvals, licences and authorizations to such an extent and on such terms and conditions as may be determined by its laws and regulations.
3. The Contracting Parties may consult with each other In any manner they may deem appropriate to encourage and facilitate investment opportunities within their respective territories.
4. Each Contracting Party shall, subject to its laws and regulations relating to the entry, stay and work of natural persons, examine in good faith and give due consideration, regardless of nationality or citizenship to requests of key personnel including top managerial and technical persons who are employed for the purposes of investments in its territory, to enter, remain temporary and work in its territory. Immediate family members of such key personnel shall also be granted similar treatment with regard to entry and temporary stay in the host Contracting Party.
5. Whenever goods or persons connected with an investment are to be transported, each Contracting Party shall, to the extent permissible under its relevant laws and regulations, permit such transport by enterprises of the other Contracting Party.

## **ARTICLE 3**

### **PROTECTION OF INVESTMENTS**

1. Investments by investors of either Contracting Party shall at all times enjoy fair and equitable treatment and full protection and security in the territory of the other Contracting Party in a manner consistent with recognized principles of international law and the provisions of this Agreement. Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the use, management, conduct, operation, expansion or sale or other disposition of investments.
2. Each Contracting Party shall make public to investors all laws, regulations, judicial decisions and administrative rulings, directives, procedures and guidelines that pertain to or directly affect investments in its territory of investors of the other Contracting Party.
3. Each Contracting Party shall provide effective means of asserting claims and enforcing rights with respect to investments. Each Contracting Party shall ensure to investors of the other Contracting Party, the right of access to its courts of justice, administrative tribunals and agencies, and all other bodies exercising adjudicatory authority, and the right to choose and designate representatives qualified under applicable laws and regulations for the purpose of the assertion of claims and the enforcement of rights with respect to their investments.

4. Neither Contracting Party, may impose as a condition for the establishment, acquisition, expansion, use, management, conduct or operation of investments by investors of the other Contracting Party mandatory measures, which may require or restrict the purchase of materials, energy, fuel or of means of production, transport or operation of any kind or restrict the marketing of products inside or outside its territory, or any other measures having the effect of discrimination against investments by investors of the other Contracting Party in favor of investments by its own investors or by investors of third states.

Furthermore, having regard to the applicable laws governing foreign direct and indirect investments in the respective Contracting Party investments shall not be subjected in the host Contracting Party to performance requirements which may be detrimental to their viability or adversely affect their use, management, conduct, operation, expansion, sale or other disposition.

5. Investments by investors of either Contracting Party shall not be subjected in the host Contracting Party to sequestration, confiscation or any other similar measures except under due process of law and in conformity with applicable principles of international law and other relevant provisions of this Agreement.

6. Each Contracting Party shall observe any obligation or undertaking it may have entered into with regard to investments in its territory by investors of the other Contracting Party.

#### **ARTICLE 4**

#### **TREATMENT OF INVESTMENTS**

1. With respect to the use; management, conduct, operation, expansion and sale or other disposition of investments made in its territory by investors of the other Contracting Party, each Contracting Party shall accord treatment no less favorable than that it accords, in like situations, to investments of its own investors or investors of any third state, whichever is the most favourable.

2. However, the provisions of this Article shall not be construed so 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:

(a) any customs union, economic union, free trade area, monetary union, or other form of regional economic arrangement or other similar international agreement, to which either of the Contracting Parties is or may become a party;

(b) any international, regional or bilateral agreement or other similar arrangement or any domestic legislation relating wholly or mainly to taxation.

#### **ARTICLE 5**

#### **COMPENSATION FOR DAMAGE OR LOSS**

1. When investments made by investors of either Contracting Party suffer damage or loss owing to war or other armed conflict, a state of national emergency, revolt, civil disturbances, insurrection, riot or other similar events in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or other

settlement, not less favourable than that the latter Contracting Party accords to its own investors or investors of any third state, whichever is the most favourable.

2. Without prejudice to paragraph 1, investors of one Contracting Party who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting Party resulting from:

(a) requisitioning of their property or part thereof by its forces or authorities;

(b) destruction of their property or part thereof by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation.

3. For the purpose of this Agreement, compensation shall include interventions or regulatory measures by a Contracting Party that have a de facto confiscatory effect resulting in depriving the investor in fact of his ownership, control or substantial benefits over his investment or which may result in loss or damage to the economic value of the investment, such as the freezing or blocking of the investment, levying of arbitrary or excessive tax on the investment, compulsory sale of all or part of the investment, or other comparable measures.

## **ARTICLE 6 EXPROPRIATION**

1. (a) Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated, dispossessed or subjected to direct or indirect measures having effect equivalent to nationalization, expropriation or dispossession (hereinafter collectively referred to as "expropriation") by the other Contracting Party except for a public purpose related to the internal needs of that Contracting Party and against prompt, adequate and effective compensation and on condition that such measures are taken on a non-discriminatory basis and in accordance with due process of law of general application.

(b) Such compensation shall amount to the actual value of the expropriated investment and shall be determined and computed in accordance with internationally recognized principles of valuation on the basis of the fair market value of the expropriated investment at the time immediately before the expropriatory action was taken or the impending expropriation became publicly known, whichever is the earlier (hereinafter referred to as the "valuation date"). Such compensation shall be paid in a freely convertible currency to be chosen by the investor at prevailing market rate of exchange for that currency on the valuation date and shall include interest at a commercial rate established on a market basis, however, in no event less than the prevailing LIBOR - rate of interest or equivalent, from the date of expropriation until the date of payment.

(c) Where the above-mentioned fair market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account all relevant factors and circumstances, such as the capital invested, the nature and duration of the investment, replacement value, appreciation, current returns, discounted cash flow value, book value and goodwill. The amount of compensation finally determined shall be promptly paid to the investor.