

The Bilateral Investment Treaty between Spain and Philippines: Legal Framework

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1. INVESTOR AND INVESTMENT CONCEPTS

Investor

- A) Individual: national legislation of each Party (Art. 1.3.a)

- B) Legal person: constitution and establishment in the host State (Art. 1.3.b)

1. INVESTOR AND INVESTMENT CONCEPTS

Investment

Broad definition:

- A) Direct investment + Portfolio investment (Art. 1.1)

- B) Movable and immovable property, mortgages, shares, intellectual property rights...(Art. 1.1)

2. TERRITORIAL AND TEMPORAL APPLICATION

Territorial application

Bi-dimensional concept
(territory and maritime spaces)
(Art. 1.2)

2. TERRITORIAL AND TEMPORAL APPLICATION

Temporal application

- A) **Investments** made *before* and *after* the entry into force of the BIT (Art. 11.2)
- B) **Disputes** arisen *after* the entry into force of the BIT (Art. 10)

2. TERRITORIAL AND TEMPORAL APPLICATION

Temporal application

In case of termination

Investments made during the term of the BIT
will be protected 10 additional years
(Art. 11.4)

3. THE DUTIES OF PROMOTION AND PROTECTION



Promotion + Admission (Art. 2)
(general clause)

3. THE DUTIES OF PROMOTION AND PROTECTION

Protection

- A) Fair and Equitable Treatment (Art. 2 *in fine*)
- B) National Treatment (Art. 3)
- C) Most-Favored Nation Treatment (excludes *Maffezini* effect) (Art. 3)

3. THE DUTIES OF PROMOTION AND PROTECTION

D) Discriminatory
Expropriation/Nationalization/Measure of
equivalent effect (Art. 5)

E) Compensation for losses (Art. 6)

F) Repatriation of investments (Art. 7)

3. THE DUTIES OF PROMOTION AND PROTECTION

Exceptions to MF Treatment

- A) Any customs union/free trade area
(Art. 3.3.a)
- B) International taxation agreements or national
legislation (Art. 3.3.b)

4. DISPUTE SETTLEMENT

Inter State (Art. 9)

Diplomatic Channels

(within 6 months)
Arbitral Tribunal

4. DISPUTE SETTLEMENT

Inter State (Art. 8)

Both parties may consult regarding any investment-related issue that may affect the BIT's implementation

4. DISPUTE SETTLEMENT

Investor - State (Art. 10)

No fork-in-the-road

National Courts
(Host State)

ICSID
Tribunal

5. OTHER PROVISIONS

Subrogation

State of origin (or designated Agency) may guarantee and pay their national investors and then claim or exercise rights against the Host State (Art. 7).