AGREEMENT BETWEEN JAPAN AND THE ARAB REPUBLIC OF EGYPT CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT

Japan and the Arab Republic of Egypt,

Desirous of strengthening economic cooperation between the two countries,

Intending to create favourable conditions for investment by nationals and companies of each country within the territory of the other country, and

Recognizing that the encouragement and reciprocal protection of investment will stimulate the flow of capital and technology for the benefit of the economies of the two countries,

Have agreed as follows:

Article 1.

For the purposes of the present Agreement:

(1) The term "investments" comprises every kind of asset including,

(a) Shares and other types of holding of companies

(b) Claims to money or to any performance under contract having a financial value

(c) Rights with respect to movable and immovable property

(d) Patents of invention, rights with respect to trade marks, trade names, trade labels and any other industrial property, and rights with respect to know-how

(e) Concession rights including those for the exploration and exploitation of natural resources;

(2) The term "returns" means the amounts yielded by an investment, in particular, profit, interest, capital gains, dividends, royalties and fees;

(3) The term "nationals" means, in relation to one Contracting Party, physical persons possessing the nationality of that Contracting Party; and

(4) The term "companies" means corporations, partnerships, companies and other associations whether or not with limited liability, whether or not with legal personality and whether or not for pecuniary profit. Companies constituted under the applicable laws and regulations of one Contracting Party and having their seat within its territory shall be deemed companies of that Contracting Party.

Article 2.

1. Each Contracting Party shall within its territory promote as far as possible investment by nationals and companies of the other Contracting Party and admit such investment in accordance with the applicable laws and regulations of the former Contracting Party.

2. Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to nationals and companies of any third country in respect of the admission of investment.

Article 3.

1. Neither Contracting Party shall within its territory subject investments and returns of nationals and companies of the other Contracting Party to treatment less favourable than that accorded to investments and returns of nationals and companies of the former Contracting Party or of nationals and companies of any third country.

2. Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to nationals and companies of such other Contracting Party or to nationals and companies of any third country with respect to engaging in all types of business activities in connection with their investment including;

(a) The maintenance of branches, agencies, offices, factories and other establishments appropriate to the conduct of business activities

(b) The control and management of companies which they have established or acquired

(c) The employment of accountants and other technical experts, executive personnel, attorneys, agents and other specialists

(d) The making and performance of contracts.

Article 4.

Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to nationals and companies of such other Contracting Party or to nationals and companies of any third country with respect to access to the courts of justice and administrative tribunals and agencies in all degrees of jurisdiction both in pursuit and in defence of their rights.

Article 5.

1. Investments and returns of nationals and companies of either Contracting Party shall receive the most constant protection and security within the territory of the other Contracting party.

2. Investments and returns of nationals and companies of either Contracting Party shall not be subjected to expropriation, nationalization, restriction or any other measure the effects of which would be tantamount to expropriation, nationalization or restriction, within the territory of the other Contracting Party unless the following conditions are complied with:

(a) The measures are taken for a public purpose and under due process of law;

(b) The measures are not discriminatory; and

(c) The measures are taken against prompt, adequate and effective compensation.

3. The compensation referred to in the provisions of paragraph 2 of the present Article shall represent the equivalent of the normal market value of the investments and returns affected at the time when expropriation, nationalization, restriction or any other comparable measure was publicly announced or when such measure was taken, whichever is the earlier, without reduction in that value due to the prospect of the very seizure which ultimately occurs. Such compensation shall be paid without delay. It shall be effectively realizable and freely transferable. Adequate provision shall have been made in an appropriate manner at or prior to the time of expropriation, nationalization, restriction or any other comparable measure for the determination and payment thereof.

4. Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to nationals and companies of such other Contracting Party or to nationals and companies of any third country with respect to the matters set forth in the provisions of paragraphs 1 to 3 of the present Article.paragraphs 1 to 3 of the present Article.

Article 6.

Nationals and companies of either Contracting Party who suffer within the territory of the other Contracting Party damages in relation to their investments, returns, or activities in connection with their investment, owing to the outbreak of hostilities or a state of national emergency, shall be accorded treatment no less favourable than that accorded to nationals and companies of such other Contracting Party or to nationals and companies of any third country, as regards restitution, compensation or other valuable consideration. Payments made under the present Article shall be effectively realizable and

freely transferable.

Article 7.

If either Contracting Party makes payment to any of its nationals or companies under a guarantee it has assumed in respect of an investment in the territory of the other Contracting Party, such other Contracting Party shall recognize the transfer to the former Contracting Party of any right or claim of such national or company in such investment on account of which such payment is made and the subrogation of the former Contracting Party to any claim or cause of action of such national or company arising in connection therewith. As regards the transfer of payment to be made to that former Contracting Party by virtue of such transfer of right or claim, the provisions of paragraphs 2 to 4 of Article 5, Article 6 and Article 8 shall apply mutatis mutandis.

Article 8.

Nationals and companies of either Contracting Party shall be accorded by the other Contracting Party treatment no less favourable than that accorded to nationals and companies of such other Contracting Party or to nationals and companies of any third country with respect to payments, remittances and transfers of funds or financial instruments effected in connection with investment made by nationals and companies of the former Contracting Party between the territories of the two Contracting Parties as well as between the territories of such other Contracting Party and of any third country, including transfer of;

(1) Capital

(2) Returns

(3) Repayment of loans

(4) Value of total or partial liquidation of an investment.

Article 9.

The present Agreement shall also apply to investments and returns of nationals and companies of either Contracting Party made or acquired within the territory of the other Contracting Party in accordance with the applicable laws and regulations of such other Contracting Party prior to the entering into force of the present Agreement.

Article 10.

The provisions of the present Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

Article 11.

Each Contracting Party shall consent to submit any legal dispute that may arise out of investment made by a national or company of the other Contracting Party to conciliation or arbitration, in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington on March 18, 1965, at the request of such national or company. Any company of the former Contracting Party which was or is controlled by nationals and companies of the other Contracting Party prior to or on the date on which the parties to such a dispute consent to submit the dispute to conciliation or arbitration shall in accordance with the provisions of Article 25 (2) (b) of the Convention be treated for the purposes of the Convention as a company of such other Contracting Party. In the event of disagreement as to whether conciliation or arbitration is the more appropriate procedure the national or company affected shall have the right to choose.

Article 12.

Companies in which nationals and companies of either Contracting Party have a substantial interest shall within the territory of the other Contracting Party be accorded;

(1) Treatment no less favourable than that accorded to like companies in which nationals and companies of any third country have a substantial interest with respect to the matters set forth in the provisions of paragraph 2 of Article 2, andparagraph 2 of Article 2, and

(2) Treatment no less favourable than that accorded to like companies in which nationals and companies of such other Contracting Party or nationals and companies of any third country have a substantial interest with respect to the matters set forth in the provisions of Article 3, paragraphs 1 to 3 of Article 5 and Article 6.Article 3, paragraphs 1 to 3 of Article 5 and Article 6.

Article 13.

1. Each Contracting Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as the other Contracting Party may make with respect to any matter affecting the operation of the present Agreement.

2. Any dispute between the Contracting Parties as to the interpretation or application of the present Agreement, not satisfactorily adjusted by diplomacy, shall be referred for decision to an arbitration board. Such arbitration board shall be composed of three arbitrators, with each Contracting Party appointing one arbitrator within a period of thirty days from the date of receipt by either Contracting Party from the other Contracting Party of a note requesting arbitration of the dispute, and the third arbitrator to be agreed upon by the two arbitrators so chosen within a further period of thirty days, provided that the third arbitrator shall not be a national of either Contracting Party.

3. If the third arbitrator is not agreed upon between the arbitrators appointed by each Contracting Party within the period referred to in the provisions of paragraph 2 of the present Article, the Contracting Parties shall request the President of the International Court of Justice to appoint the third arbitrator who shall not be a national of either Contracting Party.

4. The arbitration board shall reach its decisions by a majority of votes. Such decisions shall be final and binding.

Article 14.

1. The present Agreement shall be ratified, and the instruments of ratification thereof shall be exchanged at Cairo as soon as possible.

2. The present Agreement shall enter into force one month after the date of exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall continue in force thereafter for another period of ten years and so forth, until terminated as provided herein.

3. Either Contracting Party may, by giving one year's advance notice in writing to the other Contracting Party, terminate the present Agreement at the end of the initial ten-year period or at the end of each subsequent ten-year period.

4. In respect of investments and returns made or acquired prior to the date of termination of the present Agreement, the provisions of Articles 1 to 13 shall continue to be effective for a further period of ten years from the date of termination of the present Agreement.

DONE in duplicate, in the English language, at Tokyo, this twenty-eighth day of January of the year one thousand nine hundred and seventy-seven.

For Japan: Shoji Sato For the Arab Republic of Egypt: A.G. EI-Nazer

At the time of signing the Agreement between Japan and the Arab Republic of Egypt concerning the Encouragement and Reciprocal P~ot€ction of Investment (hereinafter refErr~d to as "the Agreement"), the undersi9 ned have agreed upon the following provisions which shall form an inte~r81 part of the Agreement!

I. NothinQ in the Agreement shall be con~trueo so as to Fant any right or impose any obli- gation in respect of copyright.

2. (l) NOlhinCiJ in the Agreement shall be construed so as to derogate from the obtiga- lions under~aken by e~ther Contracting Party towards the other Contracting Party by vjrtue o r the pro vis ion s 0 f the Par i s Co n ve n t ion [0 r the Prolection ~r InduslriGI Property of March 20, 1683, as revised at Londofl on June 2, 1934, or of any subsequent reVislon thereof, so long US such provisioflS are in force between the Contracting Parties. (2) WHhout prejudjce to the provisions oC the !oregoin~ sub-paragraph and notwith- standing the provisions of paragraph 1 of Article ~ of the Agreement, the treatment accorded by either Contracting Party in respect of industri~l property right to natiop~ls and companies of the

otner contracting Party may b~ lim)ted to treatment no less favourabl~ than that accorded to nationals and companies of the former Contracting Party.

3. With reference to the provisions of para- graph"2 of Article 2 of the Agreement, eith~r Contracting Party may require that the treat- ment with respect to the enjoyment of riyht s on immovable property shall be dependent on reciprocity.

4.10 respect of housinQ proJects) the proyi- sions of pangraph 2 of Article 2 of the Agreement shall not require the Arab Republil; of £gypt to Bccord to na~ionels of Japan and to companie~ of Japan in whlc~ the majof)ty of capilijl is n~t neld by natjonals of one or more member states of the League of Arab -------.~>- States, treatment which hus been accord~d to n8tjonal~ of such member st'te6 or to companies in which the lUJority of capltal lS held by nationals of one or more 5uc~ member stotes.

5. The provisions of paragraph 1 of Article 3 of the Agreement relative to the grant of national tr~atment and the provisions oC Article 12 of the Agreement in respect of the matters Jet forth in the aforesaid provisions ihall not be construed so U5 to extend to; (1) the conditions of registration of air- craft in the national register of either eOOlr.cting Party and rn,tlers arising from such registration, ~nd (2) mattets related to or arlsing from the nationality of ship.

6. Tht' following meUnes shall, in partIcular, be deemed "tre~Hmellt lc.~S$ {avourable" within tne m~8nin~ of the provisions of pWfagraph 2 ~f Article 3 of the Agreement if directed in a dj$crj~inatory way 89alnst national$ or companies of the other Contrijctjng Party; restricting the purch~se of raw or aUXiliary m~terial$, of power Qr fuel, Qr of meanS of production or operation of 8ny kind, impeding the marketing of products inside or o~tside the co~ntry, restricting the fund raisjn~ or the opening of inter-enterprise commercial ered;t as well a$ any other measures having similar effects.

7. Notwithstanding the proviSions of parauraph 2 of Artiele 3 of the Agreement, either Con- tracting Party may within its territory impose restrictionli upon the extent to which aliens are accorded natiooal treatment with respect to carryin~ on activities concer~in9 bankin~ and ~o the acquisition of ship or of any . interest jn ship.

8. The provisions of paragraph 2 of Article 3 of the Agreement shall not prevent eit~~r Contractlng Party [rom prescribing special formalitie5 in connection with the activities of foreign nctionaJs ~nd co~p8nies within its territory, b~t s~ch form~ljties may not Impair the substance of th~ rights set forth in the aforesaid pstagrapt. l 1 ffil gJ \ ll q. E i the reo n t rae tin g Pat t~' S hal 1 i r. il C r; 0 r (! il (I (C wJth its applicable laws and regulr;llGn~ yJvl' sympathetic consideration to applications for the entry, sojourn and residence of natIonals of the other Contracting Party who wish to enter the territory of the former Cuntracting Party and remain therein for the purp05c of m B kin gin v e!i t me n t a "0. C 8 r r yin 9 0 n B G : j v i t 1 e ~ in connect jon therewith.

10. Notwitbstanding the provis ions of Ar l ie je 3 of the Aoreement, either Contracting Party reserves the right to accord spec \91 tElX advantages on tbe basis of reciprocity or by virtue of agreements for the ~voidnnce of double taxation or for the prevention o~ fiscal evosion.

11. The provisions oC paragraphs 2 and 3 of Artiele 5 of the Agreement providing for the paYllent ot cortpel\5e.tlon shall eXlend to lntct~ ests held directly or indirectly by nlltional.~ and comp8nie! of ~lther ContrB~tlng Party In investments and returns Subjected to expro- priotio~, n8tion81i~ation, re~trjctJon or any other me~sure the effects of which would be tantamount to expropriation, nationaliz.ation or r.ltriction witbin the territory of the other Contracting Party.

12. The provisions of Article 8 of lhe Agree~ ment shall not preclude either Contract Ing Party from imposjn9 such exchange restrictions as are consistent with the rights nnd obli- gatie", that it has of Inay have as a conttac- ting party to the Articles of Agreement o{ the International Monetary Fund.

13. The term hsubstantJal interest" as used in the provisions of Article 12 of the Agr~emcnt means such extent of interest as to permit the exercise of control or decisive influence on the company. Wheth~r an interest held by nationals and cOIRpanies of ei lher Contract lO\) Party amounts to a sUbstantial interest shall be decided in each caSe through consultations between the Contracting Parties.