

# **AGREEMENT BETWEEN JAPAN AND THE KINGDOM OF SAUDI ARABIA FOR THE PROMOTION AND PROTECTION OF INVESTMENT**

Japan and the Kingdom of Saudi Arabia,

Desiring to further promote investment in order to strengthen the economic relationship between the two countries;

Intending to further create favorable conditions for greater investment by investors of one country in the other country;

Recognizing the growing importance of the progressive liberalization of investment for stimulating initiative of investors and for promoting prosperity in both countries; and

Recognizing that these objectives can be achieved without relaxing health, safety and environmental measures of general application;

Have agreed as follows:

## **Article 1.**

For the purposes of this Agreement,

(1) The term "legislation" means:

(a) in relation to Japan, the laws and regulations of Japan; and

(b) in relation to the Kingdom of Saudi Arabia, the laws, regulations and royal decrees of the Kingdom of Saudi Arabia.

(2) The term "investments" means every kind of asset owned or controlled by an investor including:

(a) an enterprise;

(b) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;

(c) bonds, debentures, loans and other forms of debt, including rights derived therefrom as well as securities issued by the government of a Contracting Party;

(d) rights under contracts, including turnkey, construction, management, production or revenuesharing contracts;

(e) claims to money and to any performance under contract having a financial value;

(f) intellectual property rights, including copy rights and related rights, patent rights and rights relating to utility models, trademarks, industrial designs, layout-designs of integrated circuits, new varieties of plants, trade names, indications of source or geographical indications and undisclosed information;

(g) rights conferred pursuant to legislation or contracts such as concessions, licenses, authorizations and permits; and

(h) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges.

(3) The term "investor of a Contracting Party" means:

(a) a natural person having the nationality of that Contracting Party in accordance with its applicable legislation; or

(b) an enterprise of that Contracting Party,

that has made investments in the other Contracting Party. A branch of an enterprise of a non-Contracting Party, which is located in the other Contracting Party, shall not be deemed as an investor of that Contracting Party.

(4) An enterprise is:

(a) "owned" by an investor if more than fifty percent of the equity interest in it is owned by the investor; and

(b) "controlled" by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions.

(5) The term "an enterprise of a Contracting Party" means any legal person or any other entity duly constituted or organized under the applicable legislation of that Contracting Party, whether or not for profit, and whether private or government owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, organization, company or branch.

(6) The term "investment activities" means the operation, management, maintenance, use, enjoyment, and sale or other disposal of investments.

(7) The term "the WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994.

(8) The term "Contracting Party" means Japan or the Kingdom of Saudi Arabia, as the context requires.

Investments include return. The term "return" means the amounts yielded by investments, in particular, profit, capital gains, dividends, royalties and fees.

A change in the form in which assets are invested or reinvested do not affect their character as investments, provided that the change is not inconsistent with the legislation of the Contracting Party where the assets are invested or reinvested.

This Agreement shall also apply to the areas of the exclusive economic zone and the continental shelf insofar as international law permits the Contracting Party concerned to exercise sovereign rights or jurisdiction in these areas.

## **Article 2.**

1. Each Contracting Party shall promote as far as possible investment by investors of the other Contracting Party and, subject to its rights to exercise powers in accordance with its applicable legislation including those with regard to foreign ownership and control, admit such investment.

2. Once admitted in accordance with its applicable legislation, each Contracting Party shall accord to investors of the other Contracting Party and to their investments treatment no less favorable than the treatment it accords in like circumstances to its own investors and their investments with respect to investment activities.

## **Article 3.**

1. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments treatment no less favorable than the treatment it accords in like circumstances to investors of a non-Contracting Party and to their investments with respect to investment activities.

2. Notwithstanding paragraph 1, each Contracting Party may not accord to investors of the other Contracting Party and to their investments preferential treatment granted under the membership of the former Contracting Party in a customs union, an economic union, a common market or a free trade area with a non-Contracting Party.

## **Article 4.**

Each Contracting Party shall accord to investments of investors of the other Contracting Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

## **Article 5.**

Each Contracting Party shall accord to investors of the other Contracting Party treatment no less favorable than the treatment it accords in like circumstances to its own investors or investors of a non-Contracting Party with respect to access to the courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defense of such investors' rights.

## **Article 6.**

Nothing in this Agreement shall be construed so as to derogate from the rights and obligations of the Contracting Parties under the WTO Agreement.

## **Article 7.**

1. Each Contracting Party shall promptly publish, or otherwise make publicly available, its legislation, administrative procedures and administrative rulings and judicial decisions of general application as well as international agreements which pertain to or affect investment activities.
2. Each Contracting Party shall, upon request by the other Contracting Party, promptly respond to specific questions and provide that other Contracting Party with information on matters set out in paragraph 1.
3. The provisions of paragraphs 1 and 2 shall not be construed so as to oblige either Contracting Party to disclose confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice privacy or legitimate commercial interests.

## **Article 8.**

Each Contracting Party shall, in accordance with its applicable legislation, give sympathetic consideration to applications for the entry, sojourn and residence of a natural person having the nationality of the other Contracting Party who wishes to enter the former Contracting Party and remain therein for the purpose of investment activities.

## **Article 9.**

1. Neither Contracting Party shall expropriate or nationalize investments of investors of the other Contracting Party or take any measure tantamount to expropriation or nationalization (hereinafter referred to as "expropriation") except:
  - (a) for a public purpose;
  - (b) In a non-discriminatory manner;
  - (c) upon payment of prompt, adequate and effective compensation pursuant to paragraphs 2, 3 and 4; and
  - (d) in accordance with due process of law and the provisions of Article 4.
2. Compensation shall be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or when the expropriation occurred, whichever is earlier. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier.
3. The compensation shall be paid without delay and shall carry a rate of return at a commercially reasonable rate, taking into account the length of time until the time of payment. It shall be effectively realizable and freely transferable and shall be freely convertible into freely usable currencies as defined in the Articles of Agreement of the International Monetary Fund, at the market exchange rate prevailing on the date of expropriation.
4. Without prejudice to the provisions of Article 14, the investors affected by expropriation shall have a right of access to the courts of justice or administrative tribunals or agencies of the Contracting Party making the expropriation to seek a prompt review of the investors' case and the amount of compensation in accordance with the principles set out in this Article.

## **Article 10.**

1. Each Contracting Party shall accord to investors of the other Contracting Party that have suffered loss or damage relating to their investments in the former Contracting Party due to armed conflict or a state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the former Contracting Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favorable than the treatment it accords to its own investors or to investors of a non-Contracting Party.
2. Any payment as a means of settlement referred to in paragraph 1 shall be effectively realizable, freely transferable and freely convertible at the market exchange rate into freely usable currency.

## **Article 11.**

If a Contracting Party or its designated agency makes a payment to any investor of that Contracting Party under an

indemnity, guarantee or insurance contract, pertaining to an investment of such investor in the other contracting party, the latter Contracting Party shall recognize the assignment to the former Contracting Party or its designated agency of any right or claim of such investor on account of which such payment is made and shall recognize the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right or claim to the same extent as the original right or claim of the investor. As regards payment to be made to that former Contracting Party or its designated agency by virtue of such assignment of right or claim and the assignment of such payment, the provisions of Articles 9, 10 and 12 shall apply mutatis mutandis.

## **Article 12.**

1. Each Contracting Party shall guarantee and ensure that all transfers relating to investments of an investor of the other Contracting Party may be freely made into and out of that Contracting Party without delay. Such transfers shall include, in particular, though not exclusively:

- (a) the initial capital and additional amounts to maintain or increase investments;
- (b) profits, capital gains, dividends, royalties, fees and other current incomes accruing from investments;
- (c) payments made under a contract including loan payments in connection with investments;
- (d) proceeds of the total or partial sale or liquidation of investments;
- (e) earnings and remuneration of personnel engaged from the other Contracting Party who work in connection with investments in the former Contracting Party;
- (f) payments made in accordance with provisions of Articles 9 and 10; and
- (g) payments arising out of the settlement of a dispute under Article 14.

2. Each Contracting Party shall further ensure that such transfers may be made without delay in freely usable currencies at the market rate of exchange prevailing on the date of the transfer. This rate of exchange shall, in the absence of a market rate of exchange, correspond to the cross rate obtained from those rates which would be applied by the International Monetary Fund for conversions of the currencies concerned into Special Drawing Rights.

3. Notwithstanding paragraphs 1 and 2, a Contracting Party may delay or prevent a transfer through the equitable, non-discriminatory and good-faith application of its legislation relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities;
- (c) criminal or penal offenses; or
- (d) ensuring compliance with orders or judgments in adjudicatory proceedings.

## **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 this Agreement.

2. Any dispute between the Contracting Parties as to the interpretation or application of this Agreement, not satisfactorily adjusted by diplomacy within six months, 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 sixty 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 as President 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 latter period specified in the second sentence of paragraph 2 have not been observed, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President should make the necessary appointments. If the Vice-President is a national of either

Contracting Party or if he, too, is prevented from discharging the said function, the member of the court next in seniority who is not a national of either Contracting Party should make the necessary appointments.

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

5. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the President of the arbitration board in discharging his or her duties and the remaining costs of the arbitration board shall be borne equally by the Contracting Parties.

## **Article 14.**

1. For the purposes of this Article, an investment dispute is a dispute between a Contracting Party and an investor of the other Contracting Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any right conferred by this Agreement with respect to investments of investors of the other Contracting Party.

2. Nothing in this Article shall be construed so as to prevent an investor who is a party to an investment dispute (hereinafter referred to in this Article as "disputing investor") from seeking administrative or judicial settlement in the Contracting Party that is a party to the investment dispute (hereinafter referred to in this Article as "disputing Party").

3. An investment dispute shall, as far as possible, be settled amicably through consultation or negotiation between the disputing investor and the disputing Party (hereinafter referred to in this Article as "the disputing parties").

4. If any investment dispute cannot be settled through such consultation or negotiation within six months from the date on which the disputing investor requested the consultation or negotiation in writing, and if the disputing investor has not submitted the investment dispute for resolution under national courts of justice of a Contracting Party or administrative tribunals or agencies, the disputing investor may submit the investment dispute to one of the following international conciliations or arbitrations:

(a) conciliation or arbitration in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (hereinafter referred to in this Article as "ICSID Convention"), so long as the ICSID Convention is in force between the Contracting Parties, and subject to the notification made by the Kingdom of Saudi Arabia on May 8, 1980, pursuant to relevant paragraph of the ICSID Convention;

(b) conciliation or arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, so long as the ICSID Convention is not in force between the Contracting Parties;

(c) arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law; and

(d) any arbitration in accordance with other arbitration rules, if agreed with the disputing Party.

5. If the investment dispute is submitted to a competent court of the disputing Party, the disputing investor may not resort to arbitrations set forth in paragraph 4 concurrently for the settlement of the same investment dispute. The final decision on the merits of the aforementioned competent court shall be binding and shall not be appealed by any means, other than what is provided for in the legislation of the Contracting Party.

6. The applicable arbitration rules shall govern the arbitration set forth in paragraph 4 except to the extent modified in this Article.

7. The disputing investor who intends to submit the investment dispute to conciliation or arbitration pursuant to paragraph 4 shall give to the disputing Party written notice of intent to do so at least ninety days before the claim is submitted. The notice of intent shall specify:

(a) the name and address of the disputing investor;

(b) the specific measures of the disputing Party at issue and a brief summary of the factual and legal basis of the investment dispute sufficient to present the problem clearly, including the obligations under this Agreement alleged to have been breached;

(c) conciliation or arbitration set forth in paragraph 4 which the disputing investor will choose; and

(d) the relief sought and the approximate amount of damages claimed.

8. (a) Each Contracting Party hereby consents to the submission of investment disputes by a disputing investor to

conciliation or arbitration set forth in paragraph 4 chosen by the disputing investor.

(b) The consent given by subparagraph (a) and the submission by a disputing investor of a claim to arbitration shall satisfy the requirements of:

(i) Chapter II of the ICSID Convention or the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, for written consent of the parties to a dispute; and

(ii) Article II of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter referred to as "New York Convention") for an agreement in writing.

9. Notwithstanding paragraph 8, no claim may be submitted to conciliation or arbitration set forth in paragraph 4, if more than five years have elapsed since the date on which the disputing investor acquired or should have first acquired, whichever is the earlier, the knowledge that the disputing investor had incurred loss or damage referred to in paragraph 1.

10. Unless the disputing parties agree otherwise, an arbitral tribunal established under paragraph 4 shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. If the disputing investor or the disputing Party fails to appoint an arbitrator or arbitrators within ninety days from the date on which the investment dispute was submitted to arbitration, the Secretary-General of the International Centre for Settlement of Investment Disputes (hereinafter referred to in this Article as "ICSID"), may be requested by either of the disputing parties, to appoint the arbitrator or arbitrators not yet appointed from the ICSID Panel of Arbitrators subject to the requirements of paragraphs 11 and 12.

11. Unless the disputing parties agree otherwise, the third arbitrator shall not be a national of either Contracting Party, nor have his or her usual place of residence in either Contracting Party, nor be employed by either of the disputing parties, nor have dealt with the investment dispute in any capacity.

12. In the case of arbitration referred to in paragraph 4, each of the disputing parties may indicate up to three nationalities, the appointment of arbitrators of which is unacceptable to it. In this event, the Secretary-General of the ICSID may be requested not to appoint as arbitrator any person whose nationality is indicated by either of the disputing parties.

13. Unless the disputing parties agree otherwise, the arbitration shall be held in a country that is a party to the New York Convention.

14. An arbitral tribunal established under paragraph 4 shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

15. The disputing Party shall deliver to the other Contracting Party:

(a) written notice of the claim submitted to the arbitration no later than thirty days after the date on which the claim was submitted; and

(b) copies of all pleadings filed in the arbitration.

16. On written notice to the disputing parties, the nondisputing Contracting Party may make submissions to the arbitral tribunal on a question of interpretation of this Agreement.

17. The arbitral tribunal may order an interim measure of protection to preserve the rights of the disputing investor, or to facilitate the conduct of arbitral proceedings, including an order to preserve evidence in the possession or control of either of the disputing parties. The arbitral tribunal shall not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in paragraph 1.

18. The award rendered by the arbitral tribunal shall include:

(a) a judgment whether or not there has been a breach by the disputing Party of any obligation under this Agreement with respect to the disputing investor and its investments; and

(b) a remedy if there has been such breach. The remedy shall be limited to one or both of the following:

(i) payment of monetary damages carrying applicable rate of return; and

(ii) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages carrying applicable rate of return in lieu of restitution.

Costs may also be awarded in accordance with the applicable arbitration rules.

19. The award rendered in accordance with paragraph 18 shall be final and binding upon the disputing parties. The disputing Party shall carry out without delay the provisions of the award and provide for the enforcement of the award in accordance with its relevant legislation.

20. Neither Contracting Party shall give diplomatic protection, or bring an international claim, in respect of an investment dispute which the other Contracting Party and an investor of the former Contracting Party have consented to submit or submitted to arbitration set forth in paragraph 4, unless the other Contracting Party shall have failed to abide by and comply with the award rendered in such investment dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the investment dispute.

## **Article 15.**

1. A Contracting Party may adopt or maintain measures not conforming with its obligations under Article 2 relating to cross-border capital transactions and Article 12:

(a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or

(b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.

2. Measures referred to in paragraph 1:

(a) shall be consistent with the Articles of Agreement of the International Monetary Fund, so long as the Contracting Party taking the measures is a party to the said Articles;

(b) shall not exceed those necessary to deal with the circumstances set out in paragraph 1;

(c) shall be temporary and shall be eliminated as soon as conditions permit;

(d) shall be promptly notified to the other Contracting Party; and

(e) shall avoid unnecessary damages to the commercial, economic and financial interests of the other Contracting Party.

3. Nothing in this Agreement shall be regarded as altering the rights enjoyed and obligations undertaken by a Contracting Party as a party to the Articles of Agreement of the International Monetary Fund.

## **Article 16.**

1. Notwithstanding any other provisions of this Agreement, a Contracting Party shall not be prevented from taking measures relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise supplying financial services, or to ensure the integrity and stability of its financial system.

2. In cases where a Contracting Party takes any measure, pursuant to paragraph 1, that does not conform with the obligations of the provisions of this Agreement, that Contracting Party shall not use such measure as a means of avoiding its obligations.

## **Article 17.**

1. Nothing in this Agreement shall be construed so as to derogate from the rights and obligations under multilateral agreements in respect of protection of intellectual property rights to which the Contracting Parties are parties.

2. Nothing in this Agreement shall be construed so as to oblige either Contracting Party to extend to investors of the other Contracting Party and their investments treatment accorded to investors of a non-Contracting Party and their investments by virtue of multilateral agreements in respect of protection of intellectual property rights, to which the former Contracting Party is a party.

3. The Contracting Parties shall give due consideration to the adequate and effective protection of intellectual property rights and shall promptly consult with each other for this purpose at the request of either Contracting Party. Depending on the results of the consultation, each Contracting Party shall, in accordance with its applicable legislation, take appropriate measures to remove the factors which are recognized as having adverse effects to the investments.

## **Article 18.**

1. The provisions of Article 2 do not prevent either Contracting Party from differentiating between treatments accorded in accordance with its legislation relating to taxes.

2. Article 3 shall not be construed so as to oblige a Contracting Party to extend to investors of the other Contracting Party special tax advantages accorded to investors of a non-Contracting Party, on the basis of reciprocity with the non-Contracting Party or by virtue of any agreement relating to taxation in force between the former Contracting Party and the non-Contracting Party.

## **Article 19.**

1. The Contracting Parties shall establish an Investment Working Group (hereinafter referred to as "the Group") within the framework of the joint committee established in accordance with provisions of Article 6 of the Agreement on Economic and Technical Cooperation Between the Government of Japan and the Government of the Kingdom of Saudi Arabia, done at Tokyo, March 1, 1975, with a view to accomplishing the objectives of this Agreement. The main function of the Group shall be to discuss any investment-related matters concerning this Agreement. Detailed functions of the Group shall be agreed upon by the Contracting Parties.

2. The Group shall meet as necessary at the request of either Contracting Party.

## **Article 20.**

The Contracting Parties shall consult each other within five years after the entry into force of this Agreement for the purpose of reviewing the Agreement, with a view to further promoting progressive liberalization of investment.

## **Article 21.**

The Contracting Parties recognize that it is inappropriate to encourage investment by investors of the other Contracting Party by relaxing environmental measures. To this effect each Contracting Party should not waive or otherwise derogate from such environmental measures as an encouragement for the establishment, acquisition or expansion of investments by investors of the other Contracting Party.

## **Article 22.**

1. A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise of the other Contracting Party and to its investments if the enterprise is owned or controlled by an investor of a non-Contracting Party and the denying Contracting Party:

(a) does not maintain diplomatic relations with the non-Contracting Party; or

(b) adopts or maintains measures with respect to the non-Contracting Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Agreement were accorded to the enterprise or to its investments.

2. Subject to prior notification and consultation, a Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise of the other Contracting Party and to its investments if the enterprise is owned or controlled by an investor of a non-Contracting Party and the enterprise has no substantial business activities in the other Contracting Party.

## **Article 23.**

1. This Agreement shall enter into force on the thirtieth day after the date of exchange of diplomatic notes informing each other that their respective legal procedures necessary for the entry into force of this Agreement have been completed. It shall remain in force for a period of ten years after its entry into force and shall continue in force unless terminated as provided in paragraph 2. This Agreement shall also apply to all investments of investors of either Contracting Party acquired in the other Contracting Party in accordance with the applicable legislation of that other Contracting Party prior to the entry into force of this Agreement.

2. A Contracting Party may, by giving one year's advance notice in writing to the other Contracting Party, terminate this Agreement at the end of the initial ten year period or at any time thereafter.



3. In respect of investments acquired prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of termination of this Agreement.

4. This Agreement shall not apply to claims arising out of events which occurred, or to claims which had been settled, prior to its entry into force.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at Jeddah, on this thirtieth day of April, 2013, in the Japanese, Arabic and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR JAPAN:

FOR THE KINGDOM OF SAUDI ARABIA:

Al-Othman