

# AGREEMENT BETWEEN JAPAN AND THE STATE OF KUWAIT FOR THE PROMOTION AND PROTECTION OF INVESTMENT

The Government of Japan and the Government of the State of Kuwait,

Desiring to further promote investment in order to strengthen the economic relationship between Japan and the State of Kuwait (hereinafter referred to as "the Contracting Parties");

Intending to create stable, equitable, favourable and transparent conditions for greater investment by investors of a Contracting Party in the Area of the other Contracting Party;

Recognising the growing importance of the progressive liberalisation of investment for stimulating initiative of investors and for promoting prosperity in the Contracting Parties;

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

Recognising the importance of the cooperative relationship between labour and management in promoting investment between the Contracting Parties;

Wishing that this Agreement will contribute to the strengthening of international cooperation with respect to the development of international rules on foreign investment; and

Believing that this Agreement marks the beginning of new economic partnership between the Contracting Parties;

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement,

(a) The term "investment" means every kind of asset owned or controlled, directly or indirectly, by an investor, including:

(b)

(1) an enterprise and a branch of an enterprise;

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

(3) bonds, debentures, loans and other forms of debt, including rights derived therefrom;

(4) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;

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

(6) intangible assets such as intellectual property rights, including copyrights 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 know-how or other undisclosed information, as well as goodwill;

(7) rights conferred pursuant to laws and regulations or contracts such as concessions, licences, authorisations and permits, including those for the exploration, prospect, exploitation and extraction of natural resources; and

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

An investment includes the amounts yielded by an investment, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as an investment.

The term "investor of a Contracting Party" means:

- (1) the Government of that Contracting Party;
- (2) a natural person having the nationality of that Contracting Party in accordance with its applicable laws and regulations; or
- (3) an enterprise of that Contracting Party,

That seeks to make, is making, or has made investments in the Area of the other Contracting Party;

(c) The term "enterprise of a Contracting Party" means any legal person or any other entity duly constituted or organised under the applicable laws and regulations 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, organisation or company;

(d) The term "investment activities" means establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposal of investments;

(e) the term "Area" means:

- (1) with respect to Japan: its territory,

And the exclusive economic zone and the continental shelf with respect to which Japan exercises sovereign rights or jurisdiction in accordance with international law; and

- (2) with respect to the State of Kuwait: the

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;

(f) The term "existing" means being in effect on the date of entry into force of this Agreement;

(g) The term "freely usable currency" means freely usable currency as defined under the Articles of Agreement of the International Monetary Fund; and

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

## **Article 2. National Treatment**

1. Each Contracting Party shall in its Area accord to investors of the other Contracting Party and to their investments treatment no less favourable than the treatment it accords in like circumstances to its own investors and to their investments with respect to investment activities.

2. Notwithstanding paragraph 1, each Contracting Party may prescribe special formalities in connection with investment activities of investors of the other Contracting Party in its Area, provided that such special formalities do not impair the substance of the rights of such investors under this Agreement.

3. Paragraph 1 does not prevent either Contracting Party from differentiating between treatments accorded in accordance with its laws and regulations relating to taxes.

## **Article 3. Most-favoured-nation Treatment**

1. Each Contracting Party shall in its Area accord to investors of the other Contracting Party and to their investments treatment no less favourable than the treatment it accords in like circumstances to investors of a third party and to their investments with respect to investment activities.

2. Paragraph 1 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 third party, on the basis of reciprocity with the third party or by virtue of any agreement relating to taxes in force between the former Contracting Party and the third party.

## **Article 4. General Treatment**

1. Each Contracting Party shall in its Area 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.
2. Neither Contracting Party shall, within its Area, in any way impair the operation, management, maintenance, use, enjoyment and sale or other disposal of investments of investors of the other Contracting Party by arbitrary measures.
3. Each Contracting Party shall observe any obligation it may have entered into with regard to investments and investment activities of investors of the other Contracting Party.

## **Article 5. Access to the Courts of Justice**

Each Contracting Party shall in its Area accord to investors of the other Contracting Party treatment no less favourable than the treatment which it accords in like circumstances to its own investors or investors of a third 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 defence of such investors' rights.

## **Article 6. Prohibition of Performance Requirements**

1. Neither Contracting Party shall impose or enforce, as a condition for investment activities in its Area of an investor of the other Contracting Party, any of the following requirements:

- (a) to export a given level or percentage of goods or services;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use or accord a preference to goods produced or services provided in its Area, or to purchase goods or services from natural or legal persons or any other entity in its Area;
- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor;
- (e) to restrict sales of goods or services in its Area that investments of that investor produce or provide by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) to restrict the exportation or sale for export;
- (g) to appoint, as executives, managers or members of boards of directors, individuals of any particular nationality;
- (h) to transfer technology, a production process or other proprietary knowledge to a natural or legal person or any other entity in its Area, except when the requirement:
  - (1) is imposed or enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws; or
  - (2) concerns the transfer of intellectual property rights which is undertaken in a manner not inconsistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (hereinafter referred to as "the TRIPS Agreement");
- (i) to locate the headquarters of that investor for a specific region or the world market in its Area;
- (j) to hire a given number or percentage of its nationals;
- (k) to achieve a given level or value of research and development in its Area; or
- (l) to supply one or more of the goods that the investor produces or the services that the investor provides to a specific region or the world market, exclusively from the Area of the former Contracting Party.

2. Paragraph 1 does not preclude either Contracting Party from conditioning the receipt or continued receipt of an advantage, in connection with investment activities in its Area of an investor of the other Contracting Party, on compliance with any of the requirements set forth in subparagraphs 1(g) through (l).

## **Article 7. Reservations and Exceptions**

1. Articles 2, 3 and 6 shall not apply to:

(a) any existing non-conforming measure that is maintained by the central government of a Contracting Party, as set out in the Schedule of each Contracting Party in Annex I;

(b) any existing non-conforming measure that is maintained by a local government of a Contracting Party;

(c) the continuation or prompt renewal of any nonconforming measure referred to in subparagraphs

(a) and (b); or

(d) an amendment or modification to any nonconforming measure referred to in subparagraphs

(a) and (b), provided that the amendment or modification does not decrease the conformity of the measure as it existed immediately before the amendment or modification with Articles 2, 3 and 6.

2. Articles 2, 3 and 6 shall not apply to any measure that a Contracting Party adopts or maintains with respect to sectors, sub-sectors or activities set out in its Schedule in Annex II.

3. Neither Contracting Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule in Annex II, require an investor of the other Contracting Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time the measure becomes effective.

4. In cases where a Contracting Party makes an amendment or a modification to any existing non-conforming measure set out in its Schedule in Annex I or where a Contracting Party adopts any new or more restrictive measure with respect to sectors, sub-sectors or activities set out in its Schedule in Annex II after the date of entry into force of this Agreement, the Contracting Party shall, prior to the implementation of the amendment or modification or the new or more restrictive measure, or in exceptional circumstances, as soon as possible thereafter:

(a) notify the other Contracting Party of detailed information on such amendment or modification, or such measure; and

(b) hold, upon request by the other Contracting Party, consultations in good-faith with that other Contracting Party with a view to achieving mutual satisfaction.

5. Each Contracting Party shall endeavour, where appropriate, to reduce or eliminate the reservations specified in its Schedules in Annexes I and II respectively.

6. Articles 2, 3 and 6 shall not apply to any measure covered by the exceptions to, or derogations from, obligations under Articles 3 and 4 of the TRIPS Agreement, as specifically provided in Articles 3 through 5 of the TRIPS Agreement.

7. Articles 2, 3 and 6 shall not apply to any measure that a Contracting Party adopts or maintains with respect to government procurement.

## **Article 8. Transparency**

1. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, administrative procedures and administrative rulings and judicial decisions of general application as well as international agreements which pertain to or affect the implementation and operation of this Agreement.

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, including that relating to contract each Contracting Party enters into with regard to investment.

3. 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 9. Measures Against Corruption**

Each Contracting Party shall ensure that measures and efforts are undertaken to prevent and combat corruption regarding matters covered by this Agreement in accordance with its laws and regulations.

## **Article 10. Entry, Sojourn and Residence of Investors**

Each Contracting Party shall, in accordance with its applicable laws and regulations, 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 territory of the former Contracting Party and to remain therein for the purpose of investment activities.

## **Article 11. Expropriation**

1. Neither Contracting Party shall expropriate or nationalise investments in its Area of investors of the other Contracting Party or take any measure equivalent to expropriation or nationalisation (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 through 4; and
- (d) in accordance with due process of law and Article 4.

2. The 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 the 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 include interest at a commercial rate established on a market basis, taking into account the length of time until the time of payment. It shall be effectively realisable and freely transferable and shall be freely convertible into the currency of the Contracting Party of the investors concerned and into freely usable currencies, at the market exchange rate prevailing on the date of expropriation.

4. Without prejudice to the provisions of Article 16, 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 12. Compensation for Losses or Damages**

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 Area of 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 Area of that former Contracting Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than that which it accords to its own investors or to investors of a third party, whichever is more favourable to the investors of the other Contracting Party.

2. Any payment as a means of settlement referred to in paragraph 1 shall be effectively realisable, freely transferable and freely convertible at the market exchange rate prevailing at the time of payment into the currency of the Contracting Party of the investors concerned and freely usable currencies.

## **Article 13. Subrogation**

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 investments of such investor in the Area of the other Contracting Party, the latter Contracting Party shall recognise 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 recognise 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, Articles 11, 12 and 14 shall apply *mutatis mutandis*.

## **Article 14. Transfers**

1. Each Contracting Party shall ensure that all transfers relating to investments in its Area of an investor of the other Contracting Party may be freely made into and out of its Area 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, interest, 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 Area of the former Contracting Party;
- (f) payments made in accordance with Articles 11 and 12; and
- (g) payments arising out of the settlement of a dispute under Article 16.

2. Each Contracting Party shall further ensure that such transfers may be made without delay in freely usable currencies at the market exchange rate prevailing on the date of each transfer.

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 laws and regulations relating to:

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

## **Article 15. Settlement of Disputes between the Contracting Parties**

1. Each Contracting Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultations through diplomatic channels regarding, such representations as the other Contracting Party may make with respect to any matter affecting the application 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 arbitral tribunal.

Such arbitral tribunal shall be composed of three arbitrators, with each Contracting Party appointing one arbitrator within a period of sixty (60) 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 Chairman by the two arbitrators so chosen within a further period of sixty (60) 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 further period of sixty (60) days referred to in paragraph 2, 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. If the President of the International Court of Justice is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President of the Court shall be invited to make the necessary appointments. If the Vice-President of the Court 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 shall be invited to make the necessary appointments.

5. The arbitral tribunal shall within a reasonable period of time take its decision by a majority of votes. Such decision shall be made in accordance with this Agreement and applicable rules of international law. Such decision shall be final and binding on both Contracting Parties.

6. Each Contracting Party shall bear the costs of the member of the arbitral tribunal of its choice, as well as the costs for its representation in the arbitration proceedings. The expenses incurred by the Chairman as well as any other costs of the arbitration proceedings shall be borne in equal parts by the two Contracting Parties. However, the arbitral tribunal may, at its discretion, direct that a higher proportion or all of such other costs of the arbitration proceedings be paid by one of the Contracting Parties. In all other respects, the arbitral tribunal shall determine its own procedure.

## **Article 16. Settlement of Investment Disputes between a Contracting Party and an**

## Investor of the other Contracting Party

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 obligation of the former Contracting Party under this Agreement with respect to the investor of that other Contracting Party or its investments in the Area of the former Contracting Party.

2. Subject to subparagraph 7(b), 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 within the Area of the Contracting Party that is a party to the investment dispute (hereinafter referred to in this Article as "disputing Party").

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

4. If the investment dispute cannot be settled through such consultations within three months from the date on which the disputing investor requested in writing the disputing Party for consultations, the disputing investor may, subject to subparagraph 7(a), 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, done at Washington, March 18, 1965 (hereinafter referred to in this Article as "the ICSID Convention"), so long as the ICSID Convention is in force between the Contracting Parties;

(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, adopted by the United Nations Commission on International Trade Law on April 28, 1976; and

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

5. 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.

6. Notwithstanding paragraph 5, no investment disputes 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.

7. (a) In the event that an investment dispute has been

Submitted to courts of justice or administrative tribunals or agencies or any other binding dispute settlement mechanism established under the laws and regulations of the disputing Party, any conciliation or arbitration set forth in paragraph 4 can be sought only if the disputing investor withdraws, in accordance with the laws and regulations of the disputing Party, its claim from such domestic remedies before the final decisions are made therein.

(b) In the event that an investment dispute has been submitted for resolution under one of the conciliations or arbitrations set forth in paragraph 4, the same investment dispute shall not be submitted for resolution under courts of justice, administrative tribunals or agencies or any other binding dispute settlement mechanism established under the laws and regulations of the disputing Party.

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

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

(a) written notice of the investment dispute submitted to the arbitration no later than thirty (30) days after the date on which the investment dispute was submitted; and

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

10. The Contracting Party which is not the disputing Party may, upon written notice to the disputing parties, make submissions to the arbitral tribunal on a question of interpretation of this Agreement.

11. Unless the disputing parties agree otherwise, the arbitration shall be held in a country that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (hereinafter referred to in this Article as "the New York Convention").

12. The award rendered by the arbitral tribunal shall be final and binding upon the disputing parties. This award shall be executed by the applicable laws and regulations as well as relevant international law including the ICSID Convention and the New York Convention, concerning the execution of award in force in the country where such execution is sought.

13. Notwithstanding paragraph 4, the disputing investor may initiate or continue an action that seeks interim injunctive relief that does not involve the payment of damages before an administrative tribunal or agency or a court of justice under the law of the disputing Party.

14. The disputing Party may not assert, as a defence, counterclaim, right of set-off or otherwise, that the disputing investor has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

## **Article 17. General and Security Exceptions**

1. Subject to the requirement that such measures are not applied by a Contracting Party in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Contracting Party, or a disguised restriction on investments of investors of the other Contracting Party in the Area of the former Contracting Party, nothing in this Agreement other than Article 12 shall be construed so as to prevent the former Contracting Party from adopting or enforcing measures:

(a) necessary to protect human, animal or plant life or health;

(b) necessary to protect public morals or to maintain public order, provided that the public order exception may only be invoked where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society;

(c) necessary to secure compliance with the laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:

(1) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contract;

(2) the protection of the privacy of the individual in relation to the processing and dissemination of personal data and the protection of confidentiality of personal records and accounts; or

(3) safety;

(d) which it considers necessary for the protection of its essential security interests:

(1) taken in time of war, or armed conflict, or other emergency in that Contracting Party or in international relations; or

(2) relating to the implementation of national policies or international agreements respecting the non-proliferation of weapons;

(e) in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security; or

(f) imposed for the protection of national treasures of artistic, historic or archaeological value.

2. In cases where a Contracting Party takes any measure, pursuant to paragraph 1, that does not conform with the obligations under this Agreement other than Article 12, that Contracting Party shall, prior to the entry into force of the measure or as soon thereafter as possible, notify the other Contracting Party of the following elements of the measure:

(a) sector and sub-sector or matter;

(b) obligation or article in respect of the measure;

(c) legal source of the measure;

(d) succinct description of the measure; and

(e) purpose of the measure.

## **Article 18. Temporary Safeguard Measures**



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 14:

(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 19. Prudential Measures**

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. Where the measures taken by a Contracting Party pursuant to paragraph 1 do not conform with this Agreement, they shall not be used as a means of avoiding the obligations of the Contracting Party under this Agreement.

## **Article 20. Intellectual Property Rights**

1. The Contracting Parties shall grant and ensure the adequate and effective protection of intellectual property rights, and promote efficiency and transparency in administrations of intellectual property protection system. For this purpose, the Contracting Parties shall promptly consult with each other at the request of either Contracting Party. Depending on the results of the consultations, each Contracting Party shall, in accordance with its applicable laws and regulations, take appropriate measures to remove the factors which are recognised as having adverse effects to investments of investors of the other Contracting Party.

2. 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.

3. 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 third 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.

## **Article 21. Taxation**

Nothing in this Agreement shall affect the rights and obligations of either Contracting Party under any convention for the avoidance of double taxation. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

## **Article 22. Joint Committee**

1. The Contracting Parties shall establish a Joint Committee (hereinafter referred to as "the Committee") with a view to accomplishing the objectives of this Agreement. The functions of the Committee shall be:

(a) to discuss and review the implementation and operation of this Agreement;

(b) to review the exceptional measures maintained, amended, modified or adopted pursuant to paragraph 1 of Article 7 for the purpose of contributing to the reduction or elimination of such exceptional measures;

(c) to discuss the exceptional measures adopted or maintained pursuant to paragraph 2 of Article 7 for the purpose of encouraging favourable conditions for investors of the Contracting Parties; and

(d) to discuss any other investment-related matters concerning this Agreement.

2. The Committee may, as necessary, make appropriate recommendations by consensus to the Contracting Parties for the more effective functioning or the attainment of the objectives of this Agreement.

3. The Committee shall be composed of representatives of the Governments of the Contracting Parties. The Committee may, upon mutual consent of the Contracting Parties, invite representatives of relevant entities other than the Governments of the Contracting Parties with the necessary expertise relevant to the issues to be discussed, and hold joint meetings with the private sectors.

4. The Committee shall determine its own rules of procedure to carry out its functions.

5. The Committee may establish sub-committees and delegate specific tasks to such sub-committees.

6. The Committee and the sub-committees established pursuant to paragraph 5 shall meet upon the request of either Contracting Party.

## **Article 23. Health, Safety and Environmental Measures and Labour Standards**

Each Contracting Party recognises that it is inappropriate to encourage investment by investors of the other Contracting Party and of a third party by relaxing its health, safety or environmental measures, or by lowering its labour standards. To this effect, each Contracting Party should not waive or otherwise derogate from such measures and standards as an encouragement for the establishment, acquisition or expansion of investments in its Area by investors of the other Contracting Party and of a third party.

## **Article 24. Denial of Benefits**

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 third party and the denying Contracting Party:

(a) does not maintain diplomatic relations with the third party; or

(b) adopts or maintains measures with respect to the third 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 third party and the enterprise has no substantial business activities in the Area of the other Contracting Party.

3. For the purposes of this Article, an enterprise is:

(a) "owned" by an investor if more than fifty (50) 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.

## **Article 25. Headings**

The headings of the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

## **Article 26. Entry Into Force**

The Governments of the Contracting Parties shall notify each other, through diplomatic channels, of the completion of their respective legal procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force on the thirtieth day after the latter of the dates of receipt of the notifications.

## **Article 27. Duration and Termination**

1. This Agreement shall remain in force for a period of thirty (30) years after its entry into force and shall continue in force unless terminated as provided for in paragraph 2.
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 thirty (30) 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 twenty (20) years from the date of termination of this Agreement.
4. This Agreement shall also apply to all investments of investors of either Contracting Party acquired in the Area of the other Contracting Party in accordance with the applicable laws and regulations of that other Contracting Party prior to the entry into force of this Agreement.
5. 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.
6. The Annexes to this Agreement shall form an integral part of this Agreement.

## **Article 28. Amendment**

Either Contracting Party may at any time request consultations with the other Contracting Party for the purpose of amending this Agreement.

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

Done at Tokyo on this twenty-second day of March 2012, in two originals in the Japanese, Arabic and English languages, all the three texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

For the Government of Japan:

For the Government of the State of Kuwait:

## **Annex I. Reservations for Measures referred to in paragraph 1 of Article 7**

1. The Schedule of a Contracting Party sets out, pursuant to paragraph 1 of Article 7, the reservations taken by that Contracting Party with respect to existing measures that do not conform with obligations imposed by:

- (a) Article 2 (National Treatment);
- (b) Article 3 (Most-Favoured-Nation Treatment); or
- (c) Article 6 (Prohibition of Performance Requirements).

2. Each reservation sets out the following elements:

- (a) "Sector" refers to the general sector in which the reservation is taken;
- (b) "Sub-Sector" refers to the specific sector in which the reservation is taken;
- (c) "Industry Classification" refers, where applicable, and only for transparency purposes, to the activity covered by the

reservation according to domestic or international industry classification codes;

(d) "Type of Reservation" specifies the obligations referred to in paragraph 1 for which the reservation is taken;

(e) "Measures" identifies the existing laws, regulations or other measures for which the reservation is taken. A measure cited in the "Measures" element:

(1) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement; and

(2) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(f) "Description" sets out, with regard to the obligations referred to in paragraph 1, the non-conforming aspects of the existing measures for which the reservation is taken.

3. In the interpretation of a reservation, all elements of the reservation shall be considered. A reservation shall be interpreted in the light of the relevant provisions of this Agreement against which the reservation is taken. The "Measures" element shall prevail over all the other elements.

4. For the purposes of this Annex, "JSIC" means Japan Standard Industrial Classification set out by the Ministry of Internal Affairs and Communications, and revised on November 6, 2007.

## Schedule of Japan

1 Sector: Agriculture, Forestry and Fisheries (Plant Breeder's Right)

Sub-Sector:

Industry Classification: JSIC 0119 Miscellaneous crop farming JSIC 0243 Tree seed gathering and forest nursery services JSIC 0413 Seaweed aquaculture JSIC 0415 Seed aquaculture

Type of Reservation: National Treatment (Article 2) Most-Favoured-Nation Treatment (Article 3)

Measures: Seeds and Seedlings Law (Law No. 83 of 1998), Article 10

Description:

A foreign person who has neither a domicile nor residence (nor the place of business, in the case of a legal person) in Japan cannot enjoy a plant breeder's right or related rights except in any of the following cases:

(a) where the country of which the person is a national or the country in which the person has a domicile or residence (or its place of business, in the case of a legal person) is a contracting party to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as Revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991;

(b) where the country of which the person is a national or the country in which the person has a domicile or residence (or its place of business, in the case of a legal person) is a contracting party to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as Revised at Geneva on November 10, 1972, and on October 23, 1978 (hereinafter referred to in this Annex as "the 1978 UPOV Convention"), or a country in relation with which Japan shall apply the 1978 UPOV Convention in accordance with paragraph (2) of Article 34 of the 1978 UPOV Convention, and further provides the protection for plant genus and species to which the person's applied variety belongs; or

(c) where the country of which the person is a national provides Japanese nationals with the protection of varieties under the same condition as its own nationals (including a country which provides such protection for Japanese nationals under the condition that Japan allows enjoyment of the plant breeder's right or related rights for the nationals of that country), and further provides the protection for plant genus and species to which the person's applied variety belongs.

2 Sector: Sub-Sector: Industry Classification: Type of Reservation: Measures: Description: Finance Banking JSIC 622 Banks, except central bank JSIC 631 Financial institutions for small-businesses National Treatment (Article 2) Deposit Insurance Law (Law No. 34 of 1971), Article 2 The deposit insurance system only covers financial institutions which have their head offices within the jurisdiction of Japan. The deposit insurance system does not cover deposits taken by branches of foreign banks.

3 Sector: Sub-Sector: Industry Classification: Type of Reservation: Measures: Description: Heat Supply JSIC 3511 Heat supply National Treatment (Article 2) Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in heat supply industry in

Japan.

4 Sector: Sub-Sector: Industry Classification: Type of Reservation: Measures: Description: Information and Communications Telecommunications JSIC 3700 Head offices primarily engaged in managerial operations JSIC 3711 Regional telecommunications, except wire broadcast telephones JSIC 3731 Services incidental to telecommunications National Treatment (Article 2) Prohibition of Performance Requirements (Article 6) Law Concerning Nippon Telegraph and Telephone Corporation (Law No. 85 of 1984), Articles 6 and 10 1. Nippon Telegraph and Telephone Corporation may not enter the name and address in its register of shareholders if the aggregate of the ratio of the voting rights directly and/or indirectly held by the persons set forth in subparagraphs (a) through (c) reaches or exceeds one third: (a) a natural person who does not have Japanese nationality; (b) a foreign government or its representative; and (c) a foreign legal person or a foreign entity. 2. Any natural person who does not have Japanese nationality may not assume the office of director or auditor of Nippon Telegraph and Telephone Corporation, Nippon Telegraph and Telephone East Corporation and Nippon Telegraph and Telephone West Corporation.

5 Sector: Sub-Sector: Industry Classification: Type of Reservation: Measures: Description: Information and Communications Telecommunications and Internet Based Services JSIC 3711 Regional telecommunications, except wire broadcast telephones JSIC 3712 Long-distance telecommunications JSIC 3719 Miscellaneous fixed telecommunications JSIC 3721 Mobile telecommunications JSIC 401 Internet based services Note: The activities covered by the reservation under JSIC 3711, 3712, 3719, 3721 or 401 are limited to the activities which are subject to the registration obligation under Article 9 of the Telecommunications Business Law (Law No. 86 of 1984). National Treatment (Article 2) Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in telecommunications business and internet based services in Japan.

6 Sector: Sub-Sector: Industry Classification: Type of Reservation: Measures: Description: Manufacturing Drugs and Medicines Manufacturing JSIC 1653 Biological preparations National Treatment (Article 2) Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in biological preparations manufacturing industry in Japan. For greater certainty, "biological preparations manufacturing industry" deals with economic activities in an establishment which mainly produces vaccine, serum, toxoid, antitoxin and some preparations similar to the aforementioned products, or blood products.

7 Sector: Sub-Sector: Industry Classification: Manufacturing Leather and Leather Products Manufacturing JSIC 1189 Textile apparel and accessories, n.e.c. JSIC 1694 Gelatine and adhesives JSIC 192 Rubber and plastic footwear and its findings JSIC 2011 Leather tanning and finishing JSIC 2021 Mechanical leather products, except gloves and mittens JSIC 2031 Cut stock and findings for boots and shoes JSIC 2041 Leather footwear JSIC 2051 Leather gloves and mittens JSIC 2061 Baggage JSIC 207 Handbags and small leather cases JSIC 2081 Fur skins JSIC 2099 Miscellaneous leather products JSIC 3253 Sporting and athletic goods Note 1: The activities covered by the reservation under JSIC 1189 or 3253 are limited to the activities related to leather and leather products manufacturing. - 33 - Type of Reservation: Measures: Description: Note 2: The activities covered by the reservation under JSIC 1694 are limited to the activities related to animal glue (nikawa) and gelatine manufacturing. National Treatment (Article 2) Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in leather and leather products manufacturing industry in Japan.

8 Sector: Sub-Sector: Industry Classification: Type of Reservation: Measures: Description: Matters Related to the Nationality of a Ship National Treatment (Article 2) Prohibition of Performance Requirements (Article 6) Ship Law (Law No. 46 of 1899), Article 1 The Japanese nationality shall be given to a ship whose owner is a Japanese national, or a company established under Japanese laws and regulations, of which all the representatives and not less than two-thirds of the executives administering the affairs are Japanese nationals.

9 Sector: Sub-Sector: Industry Classification: Type of Reservation: Measures: Description: Mining JSIC 05 Mining and quarrying of stone and gravel National Treatment (Article 2) Mining Law (Law No. 289 of 1950), Chapters 2 and 3 Only a Japanese national or a Japanese legal person may have mining rights or mining lease rights.

10 Sector: Sub-Sector: Industry Classification: Type of Reservation: Oil Industry JSIC 053 Crude petroleum and natural gas production JSIC 1711 Petroleum refining JSIC 1721 Lubricating oils and greases (not made in petroleum refineries) JSIC 1741 Paving materials JSIC 1799 Miscellaneous petroleum and coal products JSIC 4711 Ordinary warehousing JSIC 4721 Refrigerated warehousing JSIC 5331 Petroleum JSIC 6051 Petrol stations (gasoline service stations) JSIC 6052 Fuel stores, except gasoline service stations JSIC 9299 Miscellaneous business services, n.e.c. Note 1: The activities covered by the reservation under JSIC 1741, 1799, 4711, 4721 or 6052 are limited to the activities related to oil industry. Note 2: The

activities covered by the reservation under JSIC 9299 are limited to the activities related to liquefied petroleum gas industry. National Treatment (Article 2) - 37 - Measures: Description: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in oil industry in Japan. All organic chemicals such as ethylene, ethylene glycol and polycarbonates are outside the scope of the oil industry. Therefore, prior notification under the Foreign Exchange and Foreign Trade Law is not required for the investments in the manufacture of these products.

11 Sector: Sub-Sector: Industry Classification: Type of Reservation: Measures: Agriculture, Forestry and Fisheries, and Related Services (except Fisheries within the Territorial Sea, Internal Waters, Exclusive Economic Zone and Continental Shelf provided for in the reservation No. 7 in the Schedule of Japan in Annex II) JSIC 01 Agriculture JSIC 02 Forestry JSIC 03 Fisheries, except aquaculture JSIC 04 Aquaculture JSIC 6324 Agricultural cooperatives JSIC 6325 Fishery and fishery processing cooperatives JSIC 871 Agriculture, forestry and fisheries cooperative associations, n.e.c. National Treatment (Article 2) Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 - 39 - Description: The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in agriculture, forestry and fisheries, and related services (except fisheries within the territorial sea, internal waters, exclusive economic zone and continental shelf provided for in the reservation No. 7 in the Schedule of Japan in Annex II) in Japan.

12 Sector: Sub-Sector: Industry Classification: Type of Reservation: Measures: Description: Security Guard Services JSIC 9231 Guard services National Treatment (Article 2) Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in security guard services in Japan.

13 Sector: Sub-Sector: Industry Classification: Type of Reservation: Measures: Description: Transport Air Transport JSIC 4600 Head offices primarily engaged in managerial operations JSIC 4611 Air transport National Treatment (Article 2) Most-Favoured-Nation Treatment (Article 3) Prohibition of Performance Requirements (Article 6) Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 Civil Aeronautics Law (Law No. 231 of 1952), Chapters 7 and 8 1. The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in air transport business in Japan. 2. Permission of the Minister of Land, Infrastructure, Transport and Tourism for conducting air transport business as a Japanese air carrier is not granted to the following natural persons or entities applying for the permission: (a) a natural person who does not have Japanese nationality; (b) a foreign country, or a foreign public entity or its equivalent; (c) a legal person or other entity constituted under the laws of any foreign country; and (d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a), (b) or (c); or a legal person of which more than one-third of the voting rights are held by the natural persons or entities referred to in subparagraph (a), (b) or (c). In the event an air carrier falls into a natural person or an entity referred to in subparagraphs (a) through (d), the permission will lose its effect. The conditions for the permission also apply to companies, such as holding companies, which have substantial control over the air carriers. 3. A Japanese air carrier or the company having substantial control over such air carrier, such as a holding company, may reject the request from a natural person or an entity set forth in subparagraphs 2(a) through (c), who owns equity investments in such air carrier or company, to enter its name and address in the register of shareholders, in the event such air carrier or company falls into a legal person referred to in subparagraph 2(d) by accepting such request. 4. Foreign air carriers are required to obtain permission of the Minister of Land, Infrastructure, Transport and Tourism to conduct international air transport business. 5. Permission of the Minister of Land, Infrastructure, Transport and Tourism is required for the use of foreign aircraft for air transportation of passengers or cargoes to and from Japan for remuneration. 6. A foreign aircraft may not be used for a flight between points within Japan.

14 Sector: Sub-Sector: Industry Classification: Type of Reservation: Measures: Description: Transport Air Transport JSIC 4600 Head offices primarily engaged in managerial operations JSIC 4621 Aircraft service, except air transport National Treatment (Article 2) Prohibition of Performance Requirements (Article 6) Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 Civil Aeronautics Law (Law No. 231 of 1952), Chapters 7 and 8 1. The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in aerial work business in Japan. 2. Permission of the Minister of Land, Infrastructure, Transport and Tourism for conducting aerial work business is not granted to the following natural persons or entities applying for the permission: (a) a natural person who does not have Japanese nationality; (b) a foreign country, or a foreign public entity or its equivalent; (c) a legal person or other entity constituted under the laws of any foreign country; and - 45 - (d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the

natural persons or entities referred to in subparagraph (a), (b) or (c); or a legal person of which more than one-third of the voting rights are held by the natural persons or entities referred to in subparagraph (a), (b) or (c). In the event a person conducting aerial work business falls into a natural person or an entity referred to in subparagraphs (a) through (d), the permission will lose its effect. The conditions for the permission also apply to companies, such as holding companies, which have substantial control over the person conducting aerial work business. 3. A foreign aircraft may not be used for a flight between points within Japan.

15 Sector: Sub-Sector: Industry Classification: Type of Reservation: Measures: Description: Transport Air Transport (Registration of Aircraft in the National Register) National Treatment (Article 2) Prohibition of Performance Requirements (Article 6) Civil Aeronautics Law (Law No. 231 of 1952), Chapter 2 1. An aircraft owned by any of the following natural persons or entities may not be registered in the national register: (a) a natural person who does not have Japanese nationality; (b) a foreign country, or a foreign public entity or its equivalent; (c) a legal person or other entity constituted under the laws of any foreign country; and (d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a), (b) or (c); or a legal person of which more than onethird of the voting rights are held by the natural persons or entities referred to in subparagraph (a), (b) or (c). 2. A foreign aircraft may not be registered in the national register.

16 Sector: Sub-Sector: Industry Classification: Type of Reservation: Measures: Description: Transport Freight Forwarding Business (excluding freight forwarding business using air transportation) JSIC 4441 Collect-and-deliver freight transport JSIC 4821 Deliver freight transport, except collect-and-deliver freight transport National Treatment (Article 2) Most-Favoured-Nation Treatment (Article 3) Prohibition of Performance Requirements (Article 6) Freight Forwarding Business Law (Law No. 82 of 1989), Chapters 2 through 4 Enforcement Regulation of Freight Forwarding Business Law (Ministerial Ordinance of the Ministry of Transport No. 20 of 1990) The following natural persons or entities are required to be registered with, or to obtain permission or approval of, the Minister of Land, Infrastructure, Transport and Tourism for conducting freight forwarding business using international shipping. Such registration shall be made, or such permission or approval shall be granted, on the basis of reciprocity: (a) a natural person who does not have Japanese nationality; (b) a foreign country, or a foreign public entity or its equivalent; (c) a legal person or other entity constituted under the laws of any foreign country; and (d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a), (b) or (c); or a legal person of which more than onethird of the voting rights are held by the natural persons or entities referred to in subparagraph (a), (b) or (c).

17 Sector: Sub-Sector: Industry Classification: Type of Reservation: Measures: Description: Transport Freight Forwarding Business (only freight forwarding business using air transportation) JSIC 4441 Collect-and-deliver freight transport JSIC 4821 Deliver freight transport, except collect-and-deliver freight transport National Treatment (Article 2) Most-Favoured-Nation Treatment (Article 3) Prohibition of Performance Requirements (Article 6) Freight Forwarding Business Law (Law No. 82 of 1989), Chapters 2 through 4 Enforcement Regulation of Freight Forwarding Business Law (Ministerial Ordinance of the Ministry of Transport No. 20 of 1990) 1. The following natural persons or entities may not conduct freight forwarding business using air transportation between points within Japan: (a) a natural person who does not have Japanese nationality; (b) a foreign country, or foreign public entity or its equivalent; (c) a legal person or other entity constituted under the laws of any foreign country; and - 50 - (d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a), (b) or (c); or a legal person of which more than onethird of the voting rights are held by the natural persons or entities referred to in subparagraph (a), (b) or (c). 2. The natural persons or entities referred to in subparagraphs 1(a) through (d) are required to be registered with, or to obtain permission or approval of, the Minister of Land, Infrastructure, Transport and Tourism for conducting freight forwarding business using international air transportation. Such registration shall be made, or such permission or approval shall be granted, on the basis of reciprocity.

18 Sector: Sub-Sector: Industry Classification: Type of Reservation: Measures: Description: Transport Railway Transport JSIC 421 Railway transport JSIC 4851 Railway facilities services National Treatment(Article 2) Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in railway transport industry in Japan. The manufacture of vehicles, parts and components for the railway transport industry is not included in railway transport industry. Therefore, prior notification under the Foreign Exchange and Foreign Trade Law is not required for the investments in the manufacture of these products.

19 Sector: Sub-Sector: Industry Classification: Type of Reservation: Measures: Description: Transport Road Passenger Transport JSIC 4311 Common omnibus operators National Treatment (Article 2) Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 The

prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in omnibus industry in Japan. The manufacture of vehicles, parts and components for omnibus industry is not included in omnibus industry. Therefore, prior notification under the Foreign Exchange and Foreign Trade Law is not required for the investments in the manufacture of these products.

20 Sector: Sub-Sector: Industry Classification: Type of Reservation: Measures: Description: Transport Water Transport JSIC 452 Coastwise transport JSIC 453 Inland water transport JSIC 4542 Coastwise ship leasing National Treatment(Article 2) Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in water transport industry in Japan. For greater certainty, "water transport industry" refers to oceangoing/ seagoing transport, coastwise transport (i.e. maritime transport between ports within Japan), inland water transport and ship leasing industry. However, oceangoing/ seagoing transport industry and ship leasing industry excluding coastwise ship leasing industry are exempted from the prior notification requirement.

21 Sector: Sub-Sector: Industry Classification: Type of Reservation: Measures: Description: Transport Water Transport National Treatment(Article 2) Most-Favoured-Nation Treatment (Article 3) Ship Law (Law No. 46 of 1899), Article 3 Unless otherwise specified in the laws of Japan, or international agreements to which Japan is a party, ships not flying the Japanese flag are prohibited from entering Japanese ports which are not open to foreign commerce and from carrying cargoes or passengers between Japanese ports.

22 Sector: Sub-Sector: Industry Classification: Type of Reservation: Measures: Description: Water Supply and Waterworks JSIC 3611 Water for end users, except industrial users National Treatment (Article 2) Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in water supply and waterworks industry in Japan. - 56 -

## **Annex II. Reservations for Measures referred to in paragraph 2 of Article 7**

1. The Schedule of a Contracting Party sets out, pursuant to paragraph 2 of Article 7, the reservations taken by that Contracting Party with respect to specific sectors, subsectors or activities for which it may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

- (a) Article 2 (National Treatment);
- (b) Article 3 (Most-Favoured-Nation Treatment); or
- (c) Article 6 (Prohibition of Performance Requirements).

2. Each reservation sets out the following elements:

- (a) "Sector" refers to the general sector in which the reservation is taken;
- (b) "Sub-Sector" refers to the specific sector in which the reservation is taken;
- (c) "Industry Classification" refers, where applicable, and only for transparency purposes, to the activity covered by the reservation according to domestic or international industry classification codes;
- (d) "Type of Reservation" specifies the obligations referred to in paragraph 1 for which the reservation is taken;
- (e) "Description" sets out the scope of the sector, sub-sector or activities covered by the reservation; and
- (f) "Existing Measures" identifies, for transparency purposes, existing measures that apply to the sector, sub-sector or activities covered by the reservation.

3. In the interpretation of a reservation, all elements of the reservation shall be considered. The "Description" element shall prevail over all the other elements.

4. For the purposes of this Annex, "JSIC" means Japan Standard Industrial Classification set out by the Ministry of Internal Affairs and Communications, and revised on November 6, 2007.

## **Schedule of Japan**

1 Sector: Sub-Sector: Industry Classification: Type of Reservation: Description: Existing Measures: All Sectors National Treatment (Article 2) Prohibition of Performance Requirements (Article 6) When transferring or disposing of its equity



interests in, or the assets of, a state enterprise or a governmental entity, Japan reserves the right to: (a) prohibit or impose limitations on the ownership of such interests or assets by investors of the State of Kuwait or their investments; (b) impose limitations on the ability of investors of the State of Kuwait or their investments as owners of such interests or assets to control any resulting enterprise; or (c) adopt or maintain any measure relating to the nationality of executives, managers or members of the board of directors of any resulting enterprise.

2 Sector: Sub-Sector: Industry Classification: Type of Reservation: Description: Existing Measures: All Sectors National Treatment (Article 2) Prohibition of Performance Requirements (Article 6) In the event where the supply of telegraph services, postal services and betting and gambling services, manufacture of tobacco products, manufacture of Bank of Japan notes, minting and sale of coinage in Japan, which are restricted to designated enterprises or governmental entities, are liberalised to those other than the designated enterprises or governmental entities, or in the event where such designated enterprises or governmental entities no longer operate on a noncommercial basis, Japan reserves the right to adopt or maintain any measure relating to those activities.

3 Sector: Sub-Sector: Industry Classification: Type of Reservation: Description: Existing Measures: All Sectors National Treatment (Article 2) Most-Favoured-Nation Treatment (Article 3) National Treatment and Most-Favoured-Nation Treatment may not be accorded to investors of the State of Kuwait and their investments with respect to subsidies.

4 Sector: Sub-Sector: Industry Classification: Type of Reservation: Description: Existing Measures: Aerospace Industry Aircraft Industry Space Industry National Treatment (Article 2) Prohibition of Performance Requirements (Article 6) Japan reserves the right to adopt or maintain any measure relating to investment in aircraft industry and space industry. Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Articles 27 and 30 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Articles 3 and 5

5 Sector: Sub-Sector: Industry Classification: Type of Reservation: Description: Existing Measures: Arms and Explosives Industry Arms Industry Explosives Manufacturing Industry National Treatment (Article 2) Prohibition of Performance Requirements (Article 6) Japan reserves the right to adopt or maintain any measure relating to investment in arms industry and explosives manufacturing industry. Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Articles 27 and 30 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Articles 3 and 5

6 Sector: Sub-Sector: Industry Classification: Type of Reservation: Description: Existing Measures: Energy Electricity Utility Industry Gas Utility Industry Nuclear Energy Industry National Treatment (Article 2) Prohibition of Performance Requirements (Article 6) Japan reserves the right to adopt or maintain any measure relating to investment in the energy industry listed in the "Sub-Sector" element. Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Articles 27 and 30 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Articles 3 and 5

7 Sector: Sub-Sector: Industry Classification: Type of Reservation: Description: Fisheries Fisheries within the Territorial Sea, Internal Waters, Exclusive Economic Zone and Continental Shelf JSIC 031 Marine fisheries JSIC 032 Inland water fisheries JSIC 041 Marine aquaculture JSIC 042 Inland water aquaculture JSIC 8093 Recreational fishing guide business National Treatment (Article 2) Most-Favoured-Nation Treatment (Article 3) Prohibition of Performance Requirements (Article 6) Japan reserves the right to adopt or maintain any measure relating to investment in fisheries in the territorial sea, internal waters, exclusive economic zone and continental shelf of Japan. For the purposes of this reservation, the term "fisheries" means the work of taking and cultivation of aquatic resources, including the following fisheries related activities: (a) investigation of aquatic resources without taking such resources; (b) luring of aquatic resources; (c) preservation and processing of fish catches; (d) transportation of fish catches and fish products; and - 64 - Existing Measures: (e) provision of supplies to other vessels used for fisheries. Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 Law for Regulation of Fishing Operation by Foreign Nationals (Law No. 60 of 1967), Articles 3, 4 and 6 Law concerning the Exercise of Sovereign Rights concerning Fisheries in the Exclusive Economic Zones (Law No. 76 of 1996), Articles 4, 5, 7, 8, 9, 10, 11, 12 and 14

8 Sector: Sub-Sector: Industry Classification: Type of Reservation: Description: Existing Measures: Information and Communications Broadcasting Industry JSIC 380 Establishments engaged in administrative or ancillary economic activities JSIC 381 Public broadcasting, except cablecasting JSIC 382 Private-sector broadcasting, except cablecasting JSIC 383 Cablecasting National Treatment (Article 2) Prohibition of Performance Requirements (Article 6) Japan reserves the right to adopt or maintain any measure relating to investment in broadcasting industry. Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 Radio Law (Law No. 131 of 1950), Article 5 Broadcast Law (Law No. 132 of 1950), Articles 93, 116, 125, 159 and 161

9 Sector: Sub-Sector: Industry Classification: Type of Reservation: Description: Existing Measures: Land Transaction National Treatment (Article 2) Most-Favoured-Nation Treatment (Article 3) With respect to the acquisition or lease of land properties in Japan, prohibitions or restrictions may be imposed by Cabinet Order on foreign nationals or legal persons, where Japanese nationals or legal persons are placed under identical or similar prohibitions or restrictions in the foreign country.

Alien Land Law (Law No. 42 of 1925), Article 1

10 Sector: Sub-Sector: Industry Classification: Type of Reservation: Description: Existing Measures: Public Law Enforcement and Correctional Services and Social Services National Treatment (Article 2) Most-Favoured-Nation Treatment (Article 3) Prohibition of Performance Requirements (Article 6) Japan reserves the right to adopt or maintain any measure relating to investment in public law enforcement and correctional services, and in social services such as income security or insurance, social security or insurance, social welfare, primary and secondary education, public training, health and child care.

## **Schedule of the State of Kuwait**

1 Sector: Oil and Gas Industry Crude Oil and Natural Gas Production

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (Article 2)

Description: Permission of exploration and exploitation of crude oil and natural gas is not granted to foreign investor.

Existing Measures: Law No. 8 of 2001 (Regulating Direct Foreign Capital Investment), Article 3 Council of Ministers Resolution No. 1006/1 of 2003

2 Sector: Manufacturing Oil Refining

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (Article 2)

Description: Permission of oil refining is not granted to foreign investor.

Existing Measures: Law No. 8 of 2001 (Regulating Direct Foreign Capital Investment), Article 3 Council of Ministers Resolution No. 1006/1 of 2003

3 Sector: Information Production and Distribution Newspaper Publishers and Other Publishers

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (Article 2)

Description: Foreign investor may not issue and distribute newspapers and magazines, and may not conduct publishing business in the State of Kuwait. Foreign investor may not make investments in any Kuwaiti company which issues and distributes newspapers and magazines, and conducts publishing business.

Existing Measures: Law No. 8 of 2001 (Regulating Direct Foreign Capital Investment), Article 3 Council of Ministers Resolution No. 1006/1 of 2003

4 Sector: Acquisition and Possession of Land

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (Article 2)

Description: Foreign nationals or legal persons may not acquire or possess land properties in the State of Kuwait.

Existing Measures: Law No. 8 of 2001 (Regulating Direct Foreign Capital Investment), Article 3 Council of Ministers Resolution No. 1006/1 of 2003

5 Sector: Real Estate Real Estate Agencies

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (Article 2)

Description: Foreign investor may not hold the majority of share of any Kuwaiti company which transacts real estate.

Existing Measures: Law No. 8 of 2001 (Regulating Direct Foreign Capital Investment), Article 3 Council of Ministers Resolution No. 1006/1 of 2003