

# AGREEMENT BETWEEN JAPAN AND UKRAINE FOR THE PROMOTION AND PROTECTION OF INVESTMENT

Japan and Ukraine (hereinafter referred to as "the Contracting Parties"),

Desiring to further promote investment in order to strengthen the economic relationship between the Contracting Parties;

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

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

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

Recognizing the importance of the cooperative relationship between labor and management in promoting investment between the Contracting Parties;

Convinced that this Agreement will contribute to the further development of the overall relationship between the Contracting Parties;

Have agreed as follows:

## Article 1.

For the purposes of this Agreement,

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

- (a) an enterprise and a branch of 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;

Note: Notwithstanding subparagraph (c):

(i) a loan to or debt instrument issued by a

Financial institution is an investment only where it is treated as regulatory capital by a Contracting Party in whose Area the financial institution is located;

(ii) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in (i), is not an investment; and

(iii) a loan to, or debt instrument issued by, a Contracting Party or a state enterprise thereof is not an investment.

(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 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 undisclosed information;

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

including those for the exploration and exploitation of natural resources; and

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

Investments may also include amounts yielded by investments that are re-invested, 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 investments.

Note: It is confirmed that nothing in the Agreement shall apply to investments made by investors of a Contracting Party in violation of the applicable laws and regulations of either or both of the Contracting Parties.

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

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

(b) an enterprise of that Contracting Party,

That makes investments in the Area of the other Contracting Party.

(3) The term "enterprise of a Contracting Party" means any legal person or any other entity duly constituted or organized under and regulated by 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, organization or company.

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

(5) The term "Area" means:

(a) 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

(b) with respect to Ukraine: the land territory,

Internal waters and territorial sea of Ukraine and the airspace above them as well as the maritime zones beyond the territorial sea including the seabed and subsoil, over which Ukraine exercises sovereign rights or jurisdiction in accordance with its national laws in force and international law.

(6) The term "freely usable currency" means freely usable currency as defined under the Articles of Agreement of the International Monetary Fund.

(7) The term "tax convention" means a convention for the avoidance of double taxation or other international taxation agreement or arrangement.

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

## **Article 2.**

1. Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to make investments in its Area.

2. Each Contracting Party shall, subject to its rights to exercise powers in accordance with its applicable laws and regulations, including those with regard to foreign ownership and control, admit investments of investors of the other Contracting Party.

## **Article 3.**

Nothing in this Agreement shall be construed so as to derogate from:

(a) laws and regulations, administrative practices or procedures, or administrative or judicial decisions of either Contracting Party;

(b) obligations under the international agreements which are in force between the Contracting Parties; or

(c) obligations which either Contracting Party may have entered into with regard to investments made by an investor of the other Contracting Party;

That entitle investments and investment activities to treatment more favorable than that accorded by this Agreement.

#### **Article 4.**

1. Each Contracting Party shall in its Area 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 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.

#### **Article 5.**

1. Each Contracting Party shall in its Area 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 nonContracting Party and to their investments with respect to investment activities.

2. Each Contracting Party shall in its Area endeavor to 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 the establishment, acquisition and expansion of investments. For this purpose, the former Contracting Party shall, upon request by the other Contracting Party, hold consultations in good faith.

3. This Article shall not be construed so as to oblige a Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of any customs union, free trade area, a monetary union, similar international agreements leading to such unions or free trade areas, including such association agreements, or other forms of regional economic cooperation to which either Party is or may become a party.

4. For greater certainty, it is understood that the treatment referred to in this Article does not include treatment accorded to investors of a non-Contracting Party and their investments by provisions concerning the settlement of investment disputes such as the mechanism set out in Article 18 that are provided for in other international bilateral and multilateral agreements between a Contracting Party and a non-Contracting Party or nonContracting Parties.

#### **Article 6.**

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 investment activities 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.

4. Each Contracting Party shall take appropriate measures to further improve investment environment in its Area for the benefit of investors of the other Contracting Party and their investments. In this regard, each Contracting Party shall endeavor to reduce or eliminate its restrictive measures, existing on the date of the entry into force of this Agreement, vis-a-vis the investors of the other Contracting Party and their investments with respect to investment activities as well as the establishment, acquisition and expansion of investments.

#### **Article 7.**

Each Contracting Party shall in its Area accord to investors of the other Contracting Party treatment no less favorable than the treatment which it accords in like circumstances to its own investors or investors of a nonContracting 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 8.**

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 transfer technology, a production process or other proprietary knowledge to a natural or legal person or any other entity in its Area, except when:
  - (i) the requirement is imposed or enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws; or
  - (ii) the requirement 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;
- (h) to locate the headquarters of that investor for a specific region or the world market in its Area;
- (i) to hire a given number or percentage of its nationals;
- (j) to achieve a given level or value of research and development in its Area; or
- (k) 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 (k).

## **Article 9.**

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 10.**

Each Contracting Party shall, in accordance with its laws and regulations, endeavor to provide, except in cases of emergency or of purely minor nature, a reasonable opportunity for comments by the public before the adoption, amendment or repeal of regulations of general application that affect any matter covered by this Agreement.

## **Article 11.**

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 12.**

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 business activities in connection with investments.

## **Article 13.**

1. Neither Contracting Party shall expropriate or nationalize investments in its Area of investors of the other Contracting Party or take any measure equivalent 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 Article 6.

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 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 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 18, 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 14.**

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 favorable than that which it accords to its own investors or to investors of a nonContracting Party, whichever is more favorable to the investors of the other 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 prevailing at the time of payment into the currency of the Contracting Party of the investors concerned and into freely usable currencies.

## **Article 15.**

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 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, Articles 13, 14, and 16 shall apply mutatis mutandis.

## **Article 16.**

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 pursuant to a loan agreement;
- (d) proceeds of the total or partial sale or liquidation of investments;
- (e) earnings and remuneration received by nationals of the other Contracting Party who were permitted to work in connection with an investment in the Area of the former Contracting Party;
- (f) payments made in accordance with Articles 13 and 14; and
- (g) payments arising out of the settlement of a dispute under Article 18.

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 offenses; or
- (d) ensuring compliance with orders or judgments in adjudicatory proceedings.

## **Article 17.**

1. Each Contracting Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultations 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, shall be referred for decision to an arbitration board. Such arbitration board shall be composed of three arbitrators, with each Contracting Party appointing one arbitrator within a period of thirty (30) 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 (30) 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 thirty (30) 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. The arbitration board shall within a reasonable period of time reach its decision by a majority of votes. Such decision shall be final and binding.

5. Each Contracting Party shall bear the cost of the arbitrator of its choice 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 18.**

1. For the purposes of this Article, "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 six 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 arbitrations:

(a) 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) arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, provided that either Contracting Party, but not both, is a party to the ICSID Convention;

(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; 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 arbitrations set forth in paragraph 4 chosen by the disputing investor.

6. Notwithstanding paragraph 5, no investment disputes may be submitted to arbitration set forth in paragraph 4, if more than three 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 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 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. 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.

9. 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").

10. 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.

## **Article 19.**

1. Notwithstanding any other provisions in this Agreement other than the provisions of Article 14, each Contracting Party may take any measure:

(a) which it considers necessary for the protection of its essential security interests;

- (i) taken in time of war, or armed conflict, or other emergency in that Contracting Party or in international relations; or
  - (ii) relating to the implementation of national policies or international agreements respecting the non-proliferation of weapons; or
- (b) in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
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 other than the provisions of Article 14, that Contracting Party shall not use such measure as a means of avoiding its obligations.

## **Article 20.**

1. A Contracting Party may adopt or maintain measures not conforming with its obligations under Article 4 relating to cross-border capital transactions and Article 16:

(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 21.**

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 22.**

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 recognized as having adverse effects to the 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 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.

## **Article 23.**

1. Nothing in this Agreement shall apply to taxation measures except as expressly provided for in paragraphs 3, 4 and 5 of this Article.
2. Nothing in this Agreement shall affect the rights and obligations of either Contracting Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.
3. Articles 1, 6, 7, 9, 13 and 28 shall apply to taxation measures.
4. Articles 17 and 18 shall apply to disputes regarding taxation measures to the extent covered by paragraph 3.
5. Article 24 shall apply to matters regarding taxation measures to the extent covered by paragraph 3.

## **Article 24.**

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; and
  - (b) to share information on and to discuss any other investment-related matters concerning this Agreement, for the purpose of encouraging favorable conditions for investors of the Contracting Parties.
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-committee established pursuant to paragraph 5 shall meet upon the request of either Contracting Party.

## **Article 25.**

The Contracting Parties recognize that it is inappropriate for a Contracting Party to encourage investment by investors of the other Contracting Party and of a non-Contracting Party by relaxing its health, safety or environmental measures, or by lowering its labor 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 non-Contracting Party.

## **Article 26.**

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. 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 Area of the other Contracting Party.

Note: 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 27.**

Upon the request of either Contracting Party, the Contracting Parties shall undertake a review of this Agreement, with a view to further promoting and progressively liberalizing investment between the Contracting Parties.

## **Article 28.**

1. Each Contracting Party shall send through diplomatic channels to the other the notification confirming that its internal procedures necessary for the entry into force of this Agreement have been completed. This Agreement shall enter into force on the thirtieth day after the date of receipt of the latter notification.
2. This Agreement shall remain in force for a period of ten (10) years after its entry into force and shall continue in force unless terminated as provided for in paragraph 3.
3. 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 (10) year period or at any time thereafter.
4. Notwithstanding paragraph 2, 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 (10) years from the date of termination of this Agreement.
5. 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.
6. 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, have signed this Agreement.

DONE at Kyiv on this fifth day of February, 2015 in duplicate, in the Japanese, Ukrainian and English languages, all texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

FOR JAPAN:

FOR UKRAINE:

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