

# AGREEMENT BETWEEN JAPAN AND THE UNITED ARAB EMIRATES FOR THE PROMOTION AND PROTECTION OF INVESTMENT

Japan and the United Arab Emirates (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 further 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; and

Convinced that this Agreement will contribute to the further development of the overall relationship 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, which has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk, including:

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

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

(iii) bonds, debentures, loans and other forms of

debt, including rights derived therefrom;

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

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

(vi) 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;

(vii) rights conferred pursuant to laws and regulations or contracts such as concessions, licences, authorisations and permits; and

(viii) 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 or reinvested does not affect their character as

investment, provided that the change is not inconsistent with the laws and regulations of the Contracting Party where the assets are invested or reinvested.

Natural resources shall not be covered by this Agreement.

(b) the term "investor of a Contracting Party" means:

(i) that Contracting Party;

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

(iii) an enterprise of that Contracting Party,

that seeks to make, is making or has made an investment 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) an enterprise is:

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

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

(e) the term "Area" means:

(i) 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

(ii) with respect to the United Arab Emirates: the territory of the United Arab Emirates which is under its sovereignty including the territorial sea and airspace, as well as submarine areas over which the United Arab Emirates exercises, in conformity with international law and the laws of the United Arab Emirates, sovereign rights in respect of any activity carried on in connection with the exploration for or the exploitation of the natural resources;

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

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

## **Article 2. Promotion and Admission of Investment**

1. Each Contracting Party shall encourage and create favourable 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 investment of investors of the other Contracting Party.

3. It is confirmed that this Article shall not be construed to derogate from the obligations of each Contracting Party arising from the Agreement on Trade- Related Investment Measures in Annex 1A to the WTO Agreement.

## **Article 3. National Treatment**

1. Once investment is admitted in accordance with its applicable laws and regulations, 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 the operation, management, maintenance, use, enjoyment and sale or other disposal of investments.

2. Paragraph 1 shall not be construed so as to prevent a Contracting Party from adopting or maintaining a measure that prescribes special formalities in connection with the operation, management, maintenance, use, enjoyment and sale or other disposal of investments 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 shall not apply to subsidies including grants, government supported loans, guarantees and insurance.

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

#### **Article 4. 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 non-Contracting Party and to their investments with respect to the operation, management, maintenance, use, enjoyment and sale or other disposal of investments.

2. 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 non-Contracting Party and to their investments with respect to the matters relating to the admission of investment.

3. Paragraph 2 shall not apply to:

(a) the matters related to:

(i) the acquisition of land property;

(ii) subsidies; or

(iii) government procurement;

(b) any treatment accorded by a Contracting Party to investors of a non-Contracting Party and to their investments on the basis of reciprocity;

(c) any preferential treatment resulting from the memberships to any bilateral or multilateral international agreement involving protection of new varieties of plants, aviation, fishery or maritime matters; and

(d) any measure relating to investments 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.

4. Neither Contracting Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by paragraph 3, 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 when the measure becomes effective.

5. Paragraphs 1 and 2 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 resulting from any existing or future free trade area, customs union, economic union, or other form of regional agreement, to which the former Contracting Party is a party.

6. 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 17 that are provided for in other international bilateral and multilateral agreements between a Contracting Party and a non-Contracting Party or non-Contracting Parties.

7. 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 non-Contracting Party, on the basis of reciprocity with the non-Contracting Party or by virtue of any agreement relating to taxes in force between the former Contracting Party and the non-Contracting Party.

#### **Article 5. General Treatment and Improvement of Investment Environment**

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

For great certainty, the concept of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by customary international law minimum standard of treatment of aliens.

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 the operation, management, maintenance, use, enjoyment and sale or other disposal of investments of investors of the other Contracting Party.

4. Each Contracting Party shall endeavour to take appropriate measures to further improve investment environment in its Area for the benefit of investors of the other Contracting Party and their investments.

## **Article 6. 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 non- Contracting Party with respect to access to the courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defence of such investors' rights.

## **Article 7. Prohibition of Performance Requirements**

1. Neither Contracting Party may, in connection with the operation, management, maintenance, use, enjoyment and sale or other disposal of investments of an investor of a Contracting Party or of a non-Contracting Party in its Area, impose or enforce any requirement, or enforce any commitment or undertaking:

(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 supplied 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 the investor;

(e) to restrict sales of goods or services in its Area that investments of the investor produce or supply 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;

(h) to locate the headquarters of that investor for a specific region or the world market in its Area;

(i) to achieve a given level or value of research and development in its Area;

(j) 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 its Area; or

(k) to adopt:

(i) a given rate or amount of royalty under a licence contract; or

(ii) a given duration of the term of a licence contract,

in regard to any existing or future licence contract freely entered into between the investor and a natural or legal person or any other entity in its Area, provided that the requirement is imposed or the commitment or undertaking is enforced by an exercise of governmental authority of the Contracting Party.

For greater certainty, a "licence contract" referred to in this subparagraph means any licence contract concerning transfer of technology, a production process, or other proprietary knowledge.

2. Neither Contracting Party may condition the receipt or continued receipt of an advantage, in connection with the operation, management, maintenance, use, enjoyment and sale or other disposal of investments of an investor of a Contracting Party or of a non-Contracting Party in its Area, on compliance with any of the following requirements:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use or accord a preference to goods produced in its Area, or to purchase goods from natural or legal

persons or any other entity in its Area;

(c) 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 the investor;

(d) to restrict sales of goods or services in its Area that investments of the investor produce or supply by relating such sales in any way to the volume or value of its exports or foreign exchange earnings; or

(d) to restrict the exportation or sale for export.

3. (a) Nothing in paragraph 2 shall be construed to prevent a Contracting Party from conditioning the receipt or continued receipt of an advantage, in connection with the operation, management, maintenance, use, enjoyment and sale or other disposal of investments of an investor of a Contracting Party or of a non-Contracting Party in its Area, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its Area.

(b) Subparagraphs 1(g) and 1(k) shall not apply when the requirement is imposed or the commitment or undertaking is enforced by a court of justice, administrative tribunal or competition authority to remedy a practice determined after judicial or administrative process to be anti-competitive under competition laws.

(c) Subparagraph 1(g) shall not apply when 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.

(d) Subparagraphs 2(a) and 2(b) shall not apply to requirements imposed by an importing Contracting Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. Paragraphs 1 and 2 shall not apply to any requirement other than the requirements set out in those paragraphs.

5. Paragraph 2 shall not apply to any treatments accorded in accordance with the laws and regulations of each Contracting Party relating to taxes.

## **Article 8. Transparency**

1. Each Contracting Party shall endeavour to 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 the operation of this Agreement.

2. Each Contracting Party shall, upon request by the other Contracting Party, endeavour to promptly respond to specific questions and provide that other Contracting Party with information on matters set out in paragraph 1, including that relating to a 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. Public Comment Procedures**

Each Contracting Party shall, in accordance with its applicable laws and regulations, endeavour 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 10. Measures Against Corruption**

Each Contracting Party shall endeavour to take appropriate measures and make efforts to prevent and combat corruption regarding matters covered by this Agreement in accordance with its applicable laws and regulations.

## **Article 11. 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 remain therein for the purpose of business activities

in connection with investments.

## **Article 12. Expropriation and Compensation**

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, 3 and 4;

and

(d) in accordance with due process of law.

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 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 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 17, 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 13. Protection from Strife**

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 non- Contracting 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 14. 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 an investment 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 transfer of such payment, the provisions of Articles 12, 13 and 15 shall apply *mutatis mutandis*.

## **Article 15. 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 from the other Contracting Party engaged in activities in connection with investments in the Area of the former Contracting Party;
- (f) payments made in accordance with Articles 12 and 13; and
- (g) payments arising out of the settlement of a dispute under Article 17.

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 the 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 judgments in adjudicatory proceedings.

## **Article 16. Settlement of Disputes between the Contracting Parties**

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

2. Any dispute between the Contracting Parties as to the interpretation and 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 sixty days from the date of receipt by either Contracting Party from the other Contracting Party of a note requesting arbitration of the dispute, and the third arbitrator to be agreed upon as President by the two arbitrators so chosen within a further period of sixty 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 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 be a national of a non-Contracting Party which has diplomatic relations with both Contracting Parties. If the President of the International Court of Justice is a national of either Contracting Party or if he or she 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 or she, 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.

4. The arbitration board shall determine its own procedure and within a reasonable period of time reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. Unless otherwise agreed, the decision shall be rendered within four months following the appointment of the third arbitrator.

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 17. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party**

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 investments of the investor of that other Contracting Party.

2. Subject to subparagraph 5(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 in the Contracting Party that is a party to the investment dispute (hereinafter referred to in this Article as "disputing Party").

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

4. If any investment dispute cannot be settled through such consultations or negotiations within six months from the date on which the disputing investor requested in writing the disputing Party for consultations or negotiations, the disputing investor may, subject to subparagraph 5(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 (hereinafter referred to in this Article as "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; or

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

5. (a) In the event that an investment dispute has been submitted to courts of justice, 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.

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

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

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

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

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

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

8. (a) Each Contracting Party hereby consents to the submission of investment disputes by a disputing investor to arbitration set forth in paragraph 4 chosen by the disputing investor.

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

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

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

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



10. Notwithstanding paragraph 5, 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 court of justice under the law of the disputing Party.

11. Unless the disputing parties agree otherwise, an arbitral tribunal established under paragraph 4 shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. If the disputing investor or the disputing Party fails to appoint an arbitrator or arbitrators within ninety days from the date on which the investment dispute was submitted to arbitration, the Secretary-General of the International Centre for Settlement of Investment Disputes (hereinafter referred to in this Article as "ICSID") may be requested by either of the disputing parties, to appoint the arbitrator or arbitrators not yet appointed from the ICSID Panel of Arbitrators subject to the requirements of paragraphs 12 and 13.

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

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

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

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

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

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

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

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

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

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

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

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

(i) payment of monetary damages and applicable interest; and

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

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

20. The disputing Party may make available to the public in a timely manner all documents submitted to, or issued by, an arbitral tribunal established under paragraph 4, including an award, except for:

(a) confidential business information;

(b) information which is privileged or otherwise protected from disclosure under the applicable laws and regulations of either Contracting Party; and

(c) information which the disputing Party must withhold pursuant to the relevant arbitration rules, as applied.

21. The award rendered in accordance with paragraph 19 shall be final and binding upon the disputing parties. The

disputing Party shall carry out without delay the provisions of the award and provide for the enforcement of the award in accordance with its relevant laws and regulations.

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

## **Article 18. Security Exceptions**

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 13 shall be construed so as to prevent the former Contracting Party from adopting or enforcing measures:

(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.

## **Article 19. Temporary Safeguard Measures**

1. A Contracting Party may adopt or maintain measures not conforming with its obligations under Article 3 relating to cross-border capital transactions and Article 15:

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

## **Article 21. 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 the administration 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 consultation, 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 the investments of investors of the other Contracting Party.

2. Nothing in this Agreement shall affect the rights and obligations of the Contracting Parties 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 to their investments treatment accorded to investors of a non-Contracting Party and to 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 22. Taxation**

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.

## **Article 23. 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 and to seek solution for problems relating thereto; and

(b) to share information on and to discuss any other investment-related matters concerning this Agreement, including investment opportunities in the Contracting Parties, for the purpose of encouraging favourable 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 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 shall meet upon the request of either Contracting Party.

## **Article 24. Health, Safety and Environmental Measures and Labour Standard**

The Contracting Parties recognise 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 labour standards. To this effect each Contracting Party should not waive or otherwise derogate from such measures or standards as an encouragement for the establishment, acquisition or expansion in its Area of investments by investors of the other Contracting Party and of a non- Contracting Party.

## **Article 25. 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 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.

## **Article 26. Review**

Upon the request of either Contracting Party, the Contracting Parties shall undertake a review of this Agreement, in order to further enhance protection and promotion of investment, including its progressive liberalisation, which are consistent with laws and regulations of each Contracting Party.

## **Article 27. 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 28. Final Provisions**

1. This Agreement shall enter into force on the thirtieth day after the date of exchange of diplomatic notes informing each other that their respective legal procedures necessary for the entry into force of this Agreement have been completed. It shall remain in force for a period of ten years after its entry into force and shall continue in force unless terminated as provided in paragraph 2.

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

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

4. This Agreement shall 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 prior to its entry into force.

6. This Agreement may be amended by an agreement between the Contracting Parties. 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 in duplicate at Abu Dhabi, on this thirtieth day of April, 2018 in the English language.

FOR JAPAN:

(signed)

FOR THE UNITED ARAB EMIRATES:

(signed)