

# AGREEMENT BETWEEN JAPAN AND THE REPUBLIC OF KAZAKHSTAN FOR THE PROMOTION AND PROTECTION OF INVESTMENT

Japan and the Republic of Kazakhstan (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 both Contracting Parties;

Recognising that these objectives can be achieved without relaxing measures and standards applicable in the Areas of the Contracting Parties in the field of health, safety and environment;

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 will further deepen economic partnership between the Contracting Parties;

Have agreed as follows:

## Article 1.

For the purposes of this Agreement,

(1) The term "investments" 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;

(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 of a host State or contracts such as concessions, licences, authorisations 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 include the amounts yielded by investments, 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.

(2) The term "investor of a Contracting Party" means the following person or enterprise that seeks to make, is making or has

made investments in the Area of the other Contracting Party:

- (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;

Note: It is understood that an investor of a Contracting Party seeks to make investments in the Area of the other Contracting Party only when the investor has taken concrete steps necessary to make investments, such as when the investor has made an application for a permit or licence which authorises the establishment of investments.

(3) 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;

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

(5) The term "Area" means with respect to a Contracting Party:

- (a) the territory of that Contracting Party; and
- (b) the exclusive economic zone and the continental shelf with respect to which that Contracting Party exercises sovereign rights or jurisdiction in accordance with international law; and

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

## **Article 2.**

1. Each Contracting Party shall promote as far as possible investment by investors of the other Contracting Party and, subject to its rights to exercise powers in accordance with its applicable laws and regulations including those with regard to foreign ownership and control, admit such investment.
2. 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 endeavour to reduce or eliminate its restrictive measures, existing on the date of 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 3.**

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 above, 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 4.**

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 nonContracting Party and to their investments with respect to investment activities and the matters relating to the admission of investment.
2. The provisions of paragraph 1 above shall not apply to:
  - (a) matters related to the acquisition of land property;
  - (b) any treatment accorded by a Contracting Party to investors of a non-Contracting Party and to their investments on the basis of reciprocity; and
  - (c) any preferential treatment resulting from the memberships of any bilateral and multilateral international agreement

involving protection of new varieties of plants, aviation, fishery and maritime matters.

3. The provisions of paragraph 1 of this Article shall not be construed so as to oblige a Contracting Party to extend to investors of the other Contracting Party and their investments any preferential treatment by virtue of any existing or future customs union, economic or monetary union, free trade area or similar international agreements to which the former Contracting Party is a party or may become a party in the future.

## **Article 5.**

1. Each Contracting Party shall in its Area accord to investments of investors of the other Contracting Party fair and equitable treatment as well as 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.

## **Article 6.**

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 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 defence of such investors' rights.

## **Article 7.**

Neither Contracting Party shall impose or enforce, in connection with investment activities in its Area of an investor of the other Contracting Party, any of the requirements listed (a) to (l) of this Article except for requirements existing at the date of admission of investments by that investor. No requirements imposed or enforced by a Contracting Party in connection with investment activities in its Area of an investor of the other Contracting Party shall be more restrictive than those existing at the date of admission of investments by that investor.

(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:

(i) is imposed or enforced by a court,

Administrative tribunal or competition authority to remedy an alleged violation of competition laws; or

(ii) concerns the transfer of intellectual

Property rights which is undertaken in a manner not inconsistent with any applicable multilateral agreement in respect of protection of intellectual property rights to which it is a party;

(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.

## **Article 8.**

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 investment activities.

2. Each Contracting Party shall, upon request by the other Contracting Party, promptly respond in writing to specific written enquiries and provide that other Contracting Party with information on matters set out in paragraph 1 above, including that relating to a contract each Contracting Party enters into with regard to investment.

3. The provisions of paragraphs 1 and 2 above shall not be construed so as to oblige either Contracting Party to disclose confidential information, the disclosure of which would impede the national law enforcement or otherwise be contrary to the public interest, or which would prejudice privacy or legitimate commercial interests.

## **Article 9.**

Each Contracting Party shall, in accordance with its 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.**

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 11.**

Each Contracting Party shall, in accordance with its applicable laws and regulations, give sympathetic consideration to applications for the entry, sojourn, and residence as well as to issuance of work permit 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 12.**

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, effective compensation pursuant to below; and adequate and paragraphs 2, 3 and 4.

(d) In accordance with due process of law and Article 5 of this Agreement.

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 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 of this Agreement, 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.**

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 nonContracting 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 above 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.**

1. If a Contracting Party or its designated agency makes a payment to any investor of that Contracting Party under a guarantee or an insurance agreement in relation to investments of such investor in the Area of the other Contracting Party, then the latter Contracting Party shall recognise the following:

(a) 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

(b) the right of the former Contracting Party or its designated agency due to subrogation to exercise any such right or claim to the same extent as the original right or claim of the investor.

2. With regard to the payment to be made to the former Contracting Party or its designated agency based on the assignment of right or claim as provided for in paragraph 1(a) above and the transfer of such payment, Articles 12, 13 and 15 of this Agreement shall apply mutatis mutandis.

### **Article 15.**

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 in compliance with the procedures established by its laws and regulations. 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 12 and 13 of this Agreement; and

(g) payments arising out of the settlement of a dispute under Article 17 of this Agreement.

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 above, 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 16.**

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 days from the date of receipt by either Contracting Party from the other Contracting Party of a note requesting arbitration of the dispute, and the third arbitrator to be agreed upon as President by the two arbitrators so chosen within a further period of thirty days, provided that the third arbitrator shall not be a national of either Contracting Party.

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

4. The arbitration board shall 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 17.**

1. For the purposes of this Article:

(a) "investment dispute" means 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;

(b) "disputing investor" means the investor who is a party to an investment dispute;

(c) "disputing Party" means the Contracting Party that is a party to the investment dispute; and

(d) "disputing parties" means the disputing investor and the disputing Party.

2. Nothing in this Article shall be construed so as to prevent a disputing investor from seeking administrative or judicial settlement within the Area of the disputing Party.

3. An investment dispute shall, as far as possible, be settled amicably through consultation or negotiation between the disputing parties.

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

(a) conciliation or arbitration in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965 (hereinafter referred to in this Article as "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, 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; and

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

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

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

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

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

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

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

7. Each Contracting Party hereby consents to the submission of investment disputes by a disputing investor to conciliation or arbitration set forth in paragraph 4 of this Article chosen by the disputing investor.

8. The consent given by paragraph 7 above and the submission by a disputing investor of a claim to arbitration shall satisfy the requirements of:

(a) 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

(b) 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 7 of this Article, no claim may be submitted to conciliation or arbitration set forth in paragraph 4 of this Article, 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(a) of this Article.

10. Notwithstanding paragraph 4 of this Article, 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 applicable law of the disputing Party.

11. Unless the disputing parties agree otherwise, an arbitral tribunal established under paragraph 4 of this Article 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 sixty 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 of this Article.

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 the territory of 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 of this Article, 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 State that is a party to the New York Convention.

15. An arbitral tribunal established under paragraph 4 of this Article 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 thirty days after the date on which the claim was submitted; and

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

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

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(a) of this Article.

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

(a) a judgement 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 any applicable interest in lieu of restitution.

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

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

21. 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 of this Article, 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.**

1. Notwithstanding any other provisions in this Agreement other than the provisions of Article 13 of this Agreement, 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 above, that does not conform with the obligations of the provisions of this Agreement other than the provisions of Article 13 of this Agreement, that Contracting Party shall not use such measure as a means of avoiding its obligations.

## **Article 19.**

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

(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 above:



(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 above;

(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.**

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 above, 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.**

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

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

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

## **Article 22.**

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, 5, 6, 8 and 12 of this Agreement shall apply to taxation measures.

4. Articles 16 and 17 of this Agreement shall apply to disputes regarding taxation measures to the extent covered by paragraph 3 of this Article.

5. (a) No investor may invoke Article 12 of this Agreement as the basis for an investment dispute under Article 17 of this Agreement, where it has been determined pursuant to subparagraph (b) below that the taxation measure in question is not an expropriation.

(b) The investor shall refer the issue, at the time that it delivers the notice of intent under paragraph 6 of Article 17 of this Agreement, to the competent authorities of both Contracting Parties to determine whether such measure is not an expropriation. If the competent authorities of both Contracting Parties do not consider the issue or, having considered it, fail to determine, within a period of one hundred and eighty-three days of such referral, that the measure is not an expropriation, the investor may submit its claim to arbitration under Article 17 of this Agreement.

(c) For the purposes of subparagraph (b) above, the term "competent authorities" means:

(i) with respect to Japan, the Minister of Finance or his or her authorised representatives, who shall consider the issue in consultation with the Minister for Foreign Affairs or his or her authorised representatives; and

(ii) with respect to the Republic of Kazakhstan, the Minister of Finance or his or her authorised representative.

## **Article 23.**

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

4. The Committee may establish sub-committees and delegate specific tasks to such sub-committees. The Committee, upon mutual consent of the Contracting Parties, may hold joint meetings with the private sectors.

5. The Committee shall meet upon the request of either Contracting Party.

## **Article 24.**

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 and 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 nonContracting Party.

## **Article 25.**

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

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

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

2. Subject to prior notification and consultation, a Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise of the other Contracting Party and to its investments if the enterprise is owned or controlled by an investor of a non-Contracting Party and the enterprise has no substantial business activities in the 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 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 26.**

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. It shall remain in force for a period of ten years after its entry into force and shall automatically continue in force unless terminated as provided for in paragraph 2 below.

2. A Contracting Party may, by giving one year's advance notice through diplomatic channels 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. This Agreement may be amended by mutual consent of the Contracting Parties at any time after its entry into force.

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. 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.

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 authorised, have signed this Agreement.

Done at Astana on this twenty-third day of October, 2014 in duplicate in the English language.

For Japan:

For the Republic of Kazakhstan:

A. Isek